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SENATE BILL NO. 308

Offered January 19, 1996

A BILL to amend and reenact §§ 10.1-560, 10.1-1408.1, 38.2-401.1, 62.1-105 and 62.1-106 of the Code of Virginia; and to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.3; and by adding in Title 44 a Chapter numbered 3.6, consisting of articles numbered 1 through 4, containing sections numbered 44.146.41 through 44-146.66 and to repeal Articles 1 (§§ 10.1-600 through 10.1-603), 1.2 (§§ 10.1-603.16 through 10.1-603.23), 2 (§§ 10.1-604 through 10.1-613) and 6 (§§ 10.1-658 and 10.1-659) of Chapter 6 of Title 10.1 of the Code of Virginia, relating to transfer of flood control, prevention and assistance, and dam safety responsibilities to the Department of Emergency Services.

 Patron—Hanger

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-560, 10.1-1408.1, 38.2-401.1, 62.1-105 and 62.1-106 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.3 and by adding in Title 44 a Chapter numbered 3.6, consisting of articles numbered 1 through 4, containing sections numbered 44.146.41 through 44-146.66, as follows:

§ 10.1-104.3 Inspection of Soil and Water Conservation District Dams.

The Department of Conservation and Recreation shall be responsible for the inspection and reinspection of flood control dams where the maintenance and operation of the dam is the responsibility of a soil and water conservation district and where the certificate for operation of the impounding structure is held by such a district.

§ 10.1-560. Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

"Certified program administrator" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Conservation plan," "erosion and sediment control plan," or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"District" or "soil and water conservation district" means a political subdivision of this Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of this chapter.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal

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60 processes.

61 "Land-disturbing activity" means any land change which may result in soil erosion from water or
62 wind and the movement of sediments into state waters or onto lands in the Commonwealth, including,
63 but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term
64 shall not include:

65 1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs
66 and maintenance work;

67 2. Individual service connections;

68 3. Installation, maintenance, or repair of any underground public utility lines when such activity
69 occurs on an existing hard surfaced road, street or sidewalk provided the land-disturbing activity is
70 confined to the area of the road, street or sidewalk which is hard surfaced;

71 4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity
72 relating to construction of the building to be served by the septic tank system;

73 5. Surface or deep mining;

74 6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site
75 disposal areas;

76 7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot
77 operations; including engineering operations as follows: construction of terraces, terrace outlets, check
78 dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour
79 furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of
80 forest crops unless the area on which harvesting occurs is reforested artificially or naturally in
81 accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona
82 fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

83 8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related
84 structures and facilities of a railroad company;

85 9. Agricultural engineering operations including but not limited to the construction of terraces, terrace
86 outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the
87 Dam Safety Act, Article 2 (§ 10.1-604 et seq.) of Chapter 6 of this title *Dam Safety Law* (§ 44-146.56 et
88 seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and
89 land irrigation;

90 10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the
91 program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions
92 under which this exception shall apply;

93 11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
94 poles;

95 12. Shore erosion control projects on tidal waters when the projects are approved by local wetlands
96 boards, the Marine Resources Commission or the United States Army Corps of Engineers; and

97 13. Emergency work to protect life, limb or property, and emergency repairs; however, if the
98 land-disturbing activity would have required an approved erosion and sediment control plan, if the
99 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
100 accordance with the requirements of the plan-approving authority.

101 "Local erosion and sediment control program" or "local control program" means an outline of the
102 various methods employed by a program authority to regulate land-disturbing activities and thereby
103 minimize erosion and sedimentation in compliance with the state program and may include such items
104 as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

105 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a
106 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person,
107 firm or corporation in control of a property.

108 "Permittee" means the person to whom the permit authorizing land-disturbing activities is issued or
109 the person who certifies that the approved erosion and sediment control plan will be followed.

110 "Person" means any individual, partnership, firm, association, joint venture, public or private
111 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,
112 city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal
113 entity.

114 "Plan-approving authority" means the Board, the program authority, or a department of a program
115 authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing
116 activities on a unit or units of lands and for approving plans.

117 "Program authority" means a district, county, city, or town which has adopted a soil erosion and
118 sediment control program which has been approved by the Board.

119 "State erosion and sediment control program" or "state program" means the program administered by
120 the Board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

121 "State waters" means all waters on the surface and under the ground wholly or partially within or

bordering the Commonwealth or within its jurisdiction.

"Town" means an incorporated town.

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

B. No application for a new solid waste management facility permit shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.1-431, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant.

C. Notwithstanding any other provision of law:

1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement shall, prior to July 1, 1991, file a disclosure statement with the Director.

2. Every applicant for a permit under this article shall file a disclosure statement with the Director together with the permit application or prior to September 1, 1990, whichever comes later. No permit application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

4. The Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirements of this subsection for a captive industrial waste landfill when such requirements would not serve the purposes of this chapter.

D. No permit for a new solid waste management facility shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to prevent a substantial present or potential hazard to human health and the environment.

The Director may include in any permit such ~~recordkeeping~~ *record keeping*, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such ~~recordkeeping~~ *record keeping*, testing and reporting requirements shall require disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by

the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in open dumps.

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in ~~§ 10.1-600~~ § 44-146.45; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with the Virginia Fertilizer Act (§ 3.1-106.1 et seq.). As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in subsection B of § 3.1-22.29.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process, active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing in this subsection shall be construed to prohibit a city or county from exercising its existing authority to regulate such facilities by requiring, among other things, permits and proof of financial security.

M. In receiving and processing applications for permits required by this section, the Director shall assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii) pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted upon no later than six months after they are deemed complete.

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed

of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An ~~acknowledgement~~ *acknowledgment* that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

2. A statement signed by a registered professional engineer that he has reviewed the regulations established by the Department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, has concluded: (i) that the facility is not an open dump, (ii) that the facility does not pose a substantial present or potential hazard to human health and the environment, and (iii) that the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

3. A statement signed by the owner or operator (i) that the facility complies with applicable financial assurance regulations, and (ii) estimating when the facility will reach its vertical design capacity.

The facility may not be enlarged prematurely to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

Facilities which are authorized by this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall be as follows:

Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility;

Category 2: Nonhazardous industrial waste facilities other than those that are located on property owned or controlled by the generator of the waste disposed of in the facility, provided that the facility accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's regulations.

The Director may prohibit or restrict the disposal of waste in facilities described in this subsection which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment. Facilities described in category 3 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

Owners or operators of facilities which are authorized under this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the owner or operator shall provide the Director with written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment. The Director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with regulations promulgated by the Board.

Nothing in this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.

§ 38.2-401.1. Flood Prevention and Protection Assistance Fund assessment.

The Commission shall annually assess against all licensed insurance companies doing business in this Commonwealth by writing any type of flood insurance an assessment in the amount of one percent of the total direct gross premium income for such insurance. Such assessment shall be apportioned, assessed, and paid as prescribed by § 38.2-403. In any year in which a company has no direct gross premium income from flood insurance or in which its direct gross premium income from flood

insurance is insufficient to produce at the rate of assessment prescribed by law an amount equal to or in excess of \$100, there shall be so apportioned and assessed against such company a contribution of \$100. One hundred percent of the total amount collected annually pursuant to this section shall be paid into the Flood Prevention and Protection Assistance Fund ~~established~~ *continued* per § 44-146.49. The assessment established by this section shall not apply to premium income for policies written pursuant to the National Flood Insurance Act of 1968 or for policies providing comprehensive motor vehicle insurance coverage.

CHAPTER 3.6.

COMPREHENSIVE FLOOD CONTROL PROGRAM.

Article 1.

General Provisions.

§ 44-146.41. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Department" means the Department of Emergency Services.

"Director of Emergency Services" means the Governor.

"State Coordinator" means the state coordinator and state emergency planning director of the Department.

§ 44-146.42. State interest in flood control.

A. The General Assembly declares that storms cause recurrent flooding of Virginia's land resources and result in the loss of life, damage to property, unsafe and unsanitary conditions and the disruption of commerce and government services, placing at risk the health, safety and welfare of those citizens living in flood-prone areas of the Commonwealth. Flood waters disregard jurisdictional boundaries, and the public interest requires the management of flood-prone areas in a manner that prevents injuries to persons, damage to property and pollution of state waters.

B. The General Assembly, therefore, supports and encourages those measures which prevent, mitigate and alleviate the effects of stormwater surges and flooding, and declares that the expenditure of public funds and any obligations incurred in the development of flood control and other civil works projects, the benefits of which may accrue to any county, municipality or region in the Commonwealth, are necessary expenses of local and state government.

§ 44-146.43. Flood protection programs; coordination.

The provisions of this chapter shall be coordinated with federal, state and local flood prevention and water quality programs to minimize loss of life, property damage and negative impact on the environment. This program coordination shall include, but not be limited to, the following: small watershed protection, soil conservation, stormwater management and erosion and sediment control programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation which result in hydrologic modification of rivers, streams and flood plains; the water quality and other water management programs of the State Water Control Board; forested watershed management programs of the Department of Forestry; the statewide building code and other land use control programs of the Department of Housing and Community Development; the habitat management programs of the Virginia Marine Resources Commission; the flood prevention, flood plain management, dam safety and hazard mitigation planning and disaster response programs of the Department of Emergency Services; the fish habitat protection programs of the Department of Game and Inland Fisheries; the mineral extraction regulatory program of the Department of Mines, Minerals and Energy; the flood plain restrictions of the Department of Environmental Quality; the Chesapeake Bay Preservation Area criteria and local government assistance programs of the Chesapeake Bay Local Assistance Board. The Department shall also coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land and zoning provisions of Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. The Department shall cooperate with other public and private agencies having flood plain management programs, and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

§ 44-146. 44. General powers of the Department.

A. For the purposes of this chapter the Department shall have the following general powers, which may be delegated by the Director:

1. To employ such personnel as may be required to carry out those duties conferred by law;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, including but not limited to, contracts with private nonprofit organizations, the United States, other state agencies and political subdivisions of the Commonwealth;

3. To accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such

agreements as may be necessary, convenient or desirable;

4. To prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law; and

5. To perform acts necessary or convenient to carry out the duties conferred by law.

B. Pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), the Department may promulgate regulations necessary to carry out the purposes and provisions of this chapter. A violation of any regulation shall constitute a Class 1 misdemeanor, unless a different penalty is prescribed by the Code of Virginia.

Article 2.

Flood Damage Reduction.

§ 44-146.45. Definitions.

As used in this article, unless the context requires a different meaning:

"Emergency flood insurance program" or "emergency program" means the Emergency Program of the Federal Insurance Administration which provides subsidized flood insurance for potential flood victims, applicable to both new and existing structures, pending completion of applicable actuarial rates which is a prerequisite for eligibility to participate in the regular program.

"Flood hazard area" means those areas susceptible to flooding.

"Flood plain" or "flood-prone areas" means those areas adjoining a river, stream, water course, ocean, bay or lake which are likely to be covered by floodwaters.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, the building code, health regulations, special purpose ordinances such as flood plain ordinances, grading ordinances or erosion control ordinances, and other rules, regulations and ordinances which may affect flood plain uses. The term describes such legally enforceable regulations, in any combination thereof, which provide standards for the control of the use and occupancy of flood-prone areas.

"Hundred year flood" means a flood of that level which on the average will have a one percent chance of being equaled or exceeded in any given year at designated locations.

"Locality" means a county, city, or town.

"National flood insurance program" means the program established by the United States Congress under provisions of the National Flood Insurance Act of 1968, as amended, and as expanded in the Flood Disaster Protection Act of 1973, designed to provide flood insurance at rates made affordable through federal subsidy.

"Nonfederal cost" means the flood protection project costs provided by sources other than the federal government.

"Regular flood insurance program" means a program of insurance under the national flood insurance program, for which the Federal Insurance Administrator has issued a flood insurance rate map and applicable actuarial rates, and under which new construction will not be eligible for flood insurance except at the applicable actuarial rates.

§ 44-146.46. Powers and duties of Department.

The Department shall:

1. Develop a flood protection plan for the Commonwealth. This plan shall include:

a. An inventory of flood-prone areas;

b. An inventory of flood protection studies;

c. A record of flood damages;

d. Strategies to prevent or mitigate flood damage; and

e. The collection and distribution of information relating to flooding and flood plain management.

2. Serve as the coordinator of all flood protection programs and activities in the Commonwealth, including the coordination of federal flood protection programs administered by the United States Army Corps of Engineers, the United States Department of Agriculture, the Federal Emergency Management Agency, the United States Geological Survey, the Tennessee Valley Authority, other federal agencies and local governments.

3. Make available flood and flood damage reduction data to localities for planning purposes, in order to assure necessary local participation in the planning process and in the selection of desirable alternatives which will fulfill the intent of this article. This shall include the development of a data base to include (i) all flood protection projects implemented by federal agencies and (ii) the estimated value of property damaged by major floods.

4. Assist localities in their management of flood plain activities in cooperation with the Department of Housing and Community Development.

5. Carry out the provisions of this article to ensure that the management of flood plains will preserve the capacity of the flood plain to carry and discharge a hundred year flood.

6. Make, in cooperation with localities, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with

429 local flood plain management ordinances, rules and regulations.

430 7. Coordinate with the United States Federal Emergency Management Agency to ensure current
431 identification of flood-prone communities and of the status of applications made by localities to
432 participate in the National Flood Insurance Program.

433 8. Establish guidelines which will meet minimum requirements of the National Flood Insurance
434 Program in furtherance of the policy of the Commonwealth to assure that all citizens living in
435 flood-prone areas may have the opportunity to indemnify themselves from flood losses through the
436 purchase of flood insurance under the regular flood insurance program of the National Flood Insurance
437 Act of 1968 as amended.

438 9. Subject to the provisions of the Appropriations Act, provide financial and technical assistance to
439 localities in an amount not to exceed fifty percent of the nonfederal costs of flood protection projects.

440 § 44-146.47. State agency compliance.

441 All agencies and departments of the Commonwealth shall comply with the flood plain regulations
442 established pursuant to this article when planning for facilities in flood plains.

443 Article 3.

444 Flood Prevention and Protection Assistance Fund.

445 § 44-146.48. Definitions.

446 As used in this article unless the context requires a different meaning:

447 "Flood prevention or protection" means the construction of dams, levees, flood walls, channel
448 improvements or diversions, local flood proofing, evacuation of flood-prone areas or land use controls
449 which reduce or mitigate damage from flooding.

450 "Flood prevention or protection studies" means hydraulic and hydrologic studies of flood plains
451 with historic and predicted floods, the assessment of flood risk and the development of strategies to
452 prevent or mitigate damage from flooding.

453 "Fund" or "revolving fund" means the Flood Prevention and Protection Assistance Fund.

454 "Local funds" means cash provided for project or study implementation that is not derived from
455 federal or state grants or loans.

456 "Local public body" means any city, county, town, water authority, service authority or special
457 taxing district.

458 § 44-146.49. Flood Prevention and Protection Assistance Fund continued.

459 The Flood Prevention and Protection Assistance Fund is continued. The Fund shall consist of any
460 moneys appropriated by the General Assembly and funds returned by localities in the form of interest
461 and repayment of loan principal. Any moneys remaining in the Fund at the end of the biennium
462 including any appropriated funds, all principal interest accrued, and any interest and payments shall not
463 revert to the general fund.

464 § 44-146.50. Administration of the Fund.

465 The State Coordinator shall be responsible for the administration of the Fund and shall direct the
466 distribution of grants or loans from the Fund to particular local public bodies. The Department is
467 authorized to promulgate regulations for the proper administration of the Fund. Such regulations may
468 include, but are not limited to, the establishment of amounts, interest rates, repayment terms,
469 consideration of the fiscal stability of the particular local public body applying and all other criteria for
470 awarding of grants or loans.

471 § 44-146.51. Purposes for which Fund is to be used.

472 A. The State Coordinator is authorized to make grants or loans to any city, county, town, water
473 authority, service authority or taxing district for the purpose of assisting the local public body in the
474 development and implementation of flood prevention or protection projects, or for flood prevention or
475 protection studies. Grants or loans from the Fund may match, but shall not exceed the amount of
476 contribution derived from local funds. No grant or loan award, individually or in combination for a
477 single project, shall exceed twenty-five percent of the unencumbered balance of the fund as determined
478 at the beginning of the fiscal year.

479 B. The State Coordinator is authorized to expend from the Fund up to \$50,000 annually, but no
480 more than ten percent of the Fund's balance, which shall be used as cost share with federal agencies in
481 flood protection studies of statewide or regional significance.

482 § 44-146.52. Condition for making loans or grants.

483 A. The State Coordinator may authorize a loan or grant under the provisions of § 44-146.51 only
484 when the following conditions exist:

485 1. An application for the loan or grant has been submitted by the applicant in the manner and form
486 specified by the State Coordinator, setting forth the amount of the loan or grant requested, and the use
487 to which the loan or grant will be applied. The application shall describe in detail (i) the area to be
488 studied or protected, including the population and the value of property to be protected, historic
489 flooding data and hydrologic studies projecting flood frequency; (ii) the estimated cost-benefit ratio of
490 the project; (iii) the ability of the locality to provide its share of the cost; (iv) the administration of

local flood plain management regulations; and (v) other necessary information to establish project or study priority.

2. The local public body agrees and furnishes assurance, satisfactory to the State Coordinator, that it will satisfactorily maintain any structure financed, in whole or in part, through the loans or grants provided under this article.

3. The purpose for which the loan or grant is sought is one described in § 44-146.51.

4. If the requested loan or grant is sought to acquire land, the State Coordinator shall require satisfactory evidence prior to acting on the request that the local public body will acquire the land if the loan or grant is made.

5. A local public body is eligible to receive a grant once every five years, provided that it has a flood mitigation plan approved by the State Coordinator and has demonstrated satisfactory evidence of plan implementation. Lacking an approved plan the local public body is eligible for a grant once every ten years.

6. The State Coordinator shall award no grant which would reduce the available balance of the Fund below \$200,000; however, the Director may provide a loan from the unencumbered balance of the Fund.

B. In addition to the condition for making loans established under this article, the State Coordinator may require of a local public body such covenants and conditions as the State Coordinator deems necessary or expedient to further the purpose of the loan.

C. The State Coordinator may consent to and approve any modification in the terms of any loan to any local public body subject to the regulations promulgated.

§ 44-146.53. Period of loan; interest rate; loan shall constitute a lien.

Any loan made pursuant to § 44-146.51 shall be made for a period not to exceed twenty years and shall bear interest at the rate of three percent annually. Payment of interest and principal shall be made to the State Treasurer and credited to the revolving fund, and evidence of debt taken for such loan shall be deposited with the State Treasurer and kept by him. Whenever a loan is made in accordance with the provisions of this article, a lien is hereby created against any real or personal property acquired with loan proceeds. Prepayment of the principal of any such loan, in whole or in part, may be made by the borrower without penalty; however, the borrower shall be liable for interest accrued on the principal at the time of prepayment.

§ 44-146.54. Recovery of money due to Fund.

If a borrower defaults on any payment due the State Treasurer pursuant to § 44-146.53 or on any other obligation incurred pursuant to the provisions of this article, the amounts owed to the Fund by the borrower may be recovered by the State Comptroller by transferring to the Fund the amount of the payment due to the Fund from the distribution of state funds to which the defaulting borrower may be entitled pursuant to any state law; or, any money which is to be paid into the Fund may be recoverable with interest by the Commonwealth, in the name of the Department, on motion in the Circuit Court of the City of Richmond. The Attorney General shall institute and prosecute such proceedings after a request for such action has been made by the Department.

§ 44-146.55. Record of application for grants or loans and action taken.

A record of each application for a grant or loan pursuant to § 44-146.51 and the action taken thereon shall be open to public inspection at the office of the Department and shall be presented to the Governor and members of the legislature prior to budgetary sessions of the General Assembly.

Article 4.

Dam Safety Law.

§ 44-146.56. Definitions.

As used in this article, unless the context requires a different meaning:

"Height" means the structural height of a dam which is defined as the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam to the top of the dam.

"Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials. The term "impounding structure" shall not include: (i) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (ii) dams owned or licensed by the United States government; (iii) dams constructed, maintained or operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment smaller than 100 acre-feet; (iv) water or silt retaining dams approved pursuant to § 45.1-222; (v) obstructions in a canal used to raise or lower water; (vi) nonagricultural dams which are less than twenty-five feet in height or which create a maximum impoundment smaller than 50 acre-feet; or (vii) dams not more than six feet in height regardless of storage capacity or with a storage capacity of not more than 15 acre-feet regardless of height.

552 "Owner" means the owner of the land on which a dam is situated, the holder of an easement
553 permitting the construction of a dam and any person or entity agreeing to maintain a dam.

554 "Watercourse" means a natural channel having a well-defined bed and banks and in which water
555 normally flows.

556 § 44-146.57. Promulgation of regulations by the Department.

557 The State Coordinator shall promulgate regulations in accordance with the Administrative Process
558 Act (§ 9-6.14:1 et seq.) to ensure that impounding structures in the Commonwealth are properly and
559 safely constructed, maintained and operated.

560 § 44-146.58. Local advisory committee.

561 When requested by the governing body of any affected county or city, the Department shall provide
562 for the creation of a local advisory committee to advise the Department on impoundments within that
563 locality. The advisory committee shall include, but not be limited to, representation of the owner and
564 each affected county or city. Prior to the issuance of any permits under this article, the Department
565 shall advise any existing local advisory committee of any affected jurisdiction for which a permit is
566 being sought, and request comments from the committee on the permit application. No permit shall be
567 issued until at least sixty days after such a local advisory committee has been so advised.

568 § 44-146.59. Safety inspections.

569 No one shall maintain a dam which unreasonably threatens the life or property of another. The
570 Department shall cause safety inspections, not to exceed that of a phase I inspection report as
571 established by the U.S. Army Corps of Engineers, to be made of impounding structures on such schedule
572 as it deems appropriate. The time of the initial inspection and the frequency of reinspection shall
573 depend on such factors as the condition of the structure and its size, type, location and downstream
574 hazard potential. The owners of dams found to have deficiencies which could threaten life or property if
575 not corrected shall take the corrective actions, which may include completion of a phase II inspection
576 report as established by the U.S. Army Corps of Engineers, needed to remove such deficiencies within a
577 reasonable time. All safety inspections shall be conducted by or under the supervision of a licensed
578 professional engineer. Each report shall bear the seal and signature of the licensed professional
579 engineer responsible for the inspection.

580 § 44-146.60. Unsafe dams presenting imminent danger.

581 When the State Coordinator finds an unsafe dam constituting an imminent danger to life or property,
582 he shall immediately confer with the owner. The owner of a dam found to constitute an imminent danger
583 to life or property shall take immediate corrective action. If the owner does not take appropriate and
584 timely action to correct the danger found, the Governor shall have the authority to take immediate
585 appropriate action, without the necessity for a hearing, to remove the imminent danger. The Attorney
586 General may bring an action against the owner of the impounding structure to recover the
587 Commonwealth's expenses in removing the imminent danger. There shall be a lien upon the owner's real
588 estate for the Commonwealth's expenses in removing the imminent danger. The owner may avoid the
589 Commonwealth's costs, and recover any damages, upon proving that the dam was known to be safe at
590 the time such action was taken, and that the owner had provided or offered to immediately provide such
591 proof to the State Coordinator before the action complained of was taken. Nothing herein shall in any
592 way limit any authority existing under the Emergency Services and Disaster Law (§ 44-146.13 et seq.).

593 § 44-146.61. Unsafe dams presenting no imminent danger.

594 A. Within a reasonable time after completion of a safety inspection of an impounding structure
595 authorized by § 44-146.57, the Department shall issue a report to the owner of the impounding structure
596 containing its findings and recommendations for correction of any deficiencies which could threaten life
597 or property if not corrected. Owners who have been issued a report containing recommendations for
598 correction of deficiencies shall undertake to implement the recommendations contained in the report
599 according to the schedule of implementation contained in the report. If an owner fails or refuses to
600 commence or diligently implement the recommendations for correction of deficiencies according to the
601 schedule contained in an issued report, the State Coordinator shall have the authority to issue an
602 administrative order directing the owner to commence implementation and completion of such
603 recommendations according to the schedule contained in the report with modifications as appropriate.
604 Within thirty days after being served by personal service or by mail with a copy of an order issued
605 pursuant to this section, any owner shall have the right to petition the Department for an informal
606 proceeding under § 9-6.14:11. A timely filed petition shall stay the effect of the administrative order.
607 The Department shall have the authority to affirm, modify, amend or cancel the administrative order.
608 Any owner aggrieved by a decision of the Department after an informal proceeding shall have the right
609 to judicial review of the final Department decision pursuant to the provisions of the Administrative
610 Process Act (§ 9-6.14:1 et seq.).

611 B. The provisions of subsection A of this section notwithstanding, if the State Coordinator
612 determines, after the report is issued, that changed circumstances justify reclassifying the deficiencies of
613 an impounding structure as an imminent danger to life or property, the State Coordinator may proceed

directly under § 44-146.66 to compel enforcement of his order, and the owner shall have the opportunity to contest the factual basis upon which the administrative order was issued.

§ 44-146.62. Installation of IFLOWS gauges.

A soil and water conservation district responsible for the maintenance and operation of a flood control dam shall be permitted to install Integrated Flood Observing and Warning Systems (IFLOWS) gauges and associated equipment, or a device approved by the Department, while awaiting funds to make structural modifications to correct emergency spillway capacity deficiencies in the dam, identified by the Department in a report issued pursuant to § 44-146.61, when any of the following conditions exist: (i) funds are not available to make such structural modifications to the dam, (ii) the completion of such structural modifications requires the acquisition of additional property or easements by exercise of the power of eminent domain, or (iii) funds for the IFLOWS equipment or an equivalent device have been appropriated by the General Assembly. Installation of IFLOWS gauges or similar devices shall not affect the regulated status of the dam under this article. Any IFLOWS gauges and associated equipment shall be installed in a manner approved by the Department and shall be operated and maintained by the Department.

§ 44-146.63. Right of entry.

The Department and its agents and employees shall have the right to enter any property upon consent of the owner or custodian to perform such inspections and tests or to take such other actions it deems necessary to fulfill its responsibilities under this article. If entry is denied, the Department may apply to any magistrate whose territorial jurisdiction encompasses the property to be inspected or entered for a warrant authorizing such investigation, tests or other actions. Such warrant shall issue if the magistrate finds probable cause to believe that there is a dam on such property which is not known to be safe.

§ 44-146.64. Dam safety coordination.

The Department shall coordinate all impoundment safety activities in the Commonwealth, which shall include, but not be limited to: (i) the maintenance of an inventory of all impoundment structures, and of all other similar structures which are not regulated under this article to the extent the Department deems necessary; (ii) the maintenance of a repository to record drawings of all such structures to the extent the Department deems necessary; (iii) the maintenance of an inventory of safety inspection reports for each such structure to the extent the Department deems necessary; and (iv) the maintenance of a secondary repository for all dam safety emergency action plans which are primarily filed with the Department. The Department shall provide technical assistance in the preparation, updating and execution of such plans. It shall establish uniform maintenance-of-records requirements and uniform inspection standards to be applied to all impounding structures in the Commonwealth and to be recommended for all other similar structures. It may inspect or cause to be inspected state-owned or state-licensed dams on a cost reimbursable basis at the request of the state agency owning the state-owned dam or of the licensor of the state-licensed dam.

§ 44-146.65. Technical Advisory Committee.

The Department shall establish an Impoundment Safety Technical Advisory Committee to provide technical review. The Committee may make recommendations to the Department.

§ 44-146.66. Enforcement.

Any person or legal entity failing or refusing to comply with an order issued pursuant to this article may be compelled to comply with the order in a proceeding instituted in any appropriate court by the Department.

§ 62.1-105. Impoundment of diffused surface waters.

Diffused surface waters may be captured and impounded by the owner of the land on which they are present and, when so impounded, become the property of that owner. Such impoundment shall not cause damage to others; however, the owner of land on which an impounding structure as defined in ~~§ 44-146.56~~ § 44-146.56 is to be located shall comply with the rules and regulations of the State Water Control Board.

§ 62.1-106. When floodwaters may be captured and stored by riparian owners.

Water in watercourses which is over and above the average flow of the stream may, upon approval, be captured and stored by riparian owners for their later use under the following conditions:

(1) As a result of the capture and storage of such waters, there will be no damage to others.

(2) The title to the land on which the impounding structure and the impounded water will rest are in the person or persons requesting the authority.

(3) All costs incident to such impoundment, including devices above and below for indicating average flow, will be borne by the person or persons requesting the authority.

(4) For impoundments with a capacity of more than fifty acre-feet of storage all construction is approved by a licensed professional engineer. For those with capacities of fifty acre-feet, or less, of storage all construction will be approved by a licensed professional engineer or by some other competent

675 person.

676 (5) Those requesting the authority will insure that the flow below the impoundment is equal to:

677 (a) At least the average flow when the flow immediately above the impounding structure is greater
678 than the average flow, or

679 (b) At least the flow immediately above the impounding structure when that flow is equal to or less
680 than the average flow.

681 (6) If needed, provision will be made in the impounding structure for an adequate spillway and for
682 means of releasing water to maintain the required flow downstream.

683 (7) If for the purposes of irrigation, the quantity of water stored (exclusive of foreseeable losses) will
684 not exceed that required for a period of twelve months to irrigate the cleared acreage owned by those
685 participating in the undertaking and lying in the watershed of the stream from which the water is taken.

686 (8) All structures and equipment incident to such impoundment will be maintained in safe and
687 serviceable condition by the owners and all parts thereof in a watercourse will be removed when no
688 longer required for the purpose.

689 (9) Priority to the right to store floodwaters, as outlined, will go to upstream riparian owners.

690 (10) Those impounding floodwaters will, upon request, provide appropriate information concerning
691 the impoundment to the State Water Control Board.

692 (11) The plans for an impounding structure as defined in ~~§ 10.1-604~~ § 44-146.56 have the approval of
693 the State Water Control Board and conform to the rules and regulations promulgated by the Board.

694 **2. That Articles 1 (§§ 10.1-600 through 10.1-603), 1.2 (§§ 10.1-603.16 through 10.1-603.23), 2**
695 **(§§ 10.1-604 through 10.1-613) and 6 (§§ 10.1-658 and 10.1-659), of Chapter 6 of Title 10.1 of the**
696 **Code of Virginia are repealed.**

697 **3. That the Virginia Soil and Water Conservation Board's "Impounding Structure Regulations"**
698 **(VR 625-01-00) and the Department of Conservation and Recreation's "Flood Prevention and**
699 **Protection Assistance Fund Regulations" (VR 217-02-00) shall be administered by the Department**
700 **of Emergency Services and shall remain in full force and effect notwithstanding the transfer of**
701 **such regulations. The Department of Emergency Services shall duplicate such regulations mutatis**
702 **mutandis and file the regulations with the Registrar of Regulations in accordance with the**
703 **Virginia Register Act (§ 9-6.15 et seq.). The Department of Conservation and Recreation's**
704 **"Regulatory Public Participation Procedures" (VR 217-00-00) shall be duplicated mutatis mutandis**
705 **by the Department of Emergency Services and shall be in force and effect for use by the**
706 **Department of Emergency Services once filed with the Registrar of Regulations. The Regulatory**
707 **Public Participation Procedures so duplicated shall constitute the public participation procedures**
708 **of the Department of Emergency Services and supersede the Department's previous regulations**
709 **"Guidelines for Public Participation in Regulation Development" (VR 291-00-01) which were**
710 **effective May 1, 1985. The provisions of this enactment do not affect in any way the status of the**
711 **Department of Conservation and Recreation's Regulatory Public Participation Procedures which**
712 **continue in full force and effect.**

713 **4. That all records and equipment necessary to and related to the continued operation of the Flood**
714 **Damage Reduction Act (§ 10.1-600 et seq.), the Flood Prevention and Protection Assistance Fund**
715 **(§ 10.1-603.16 et seq.), the Dam Safety Act (§ 10.1-604 et seq.) and the Comprehensive Flood**
716 **Control Program (§§ 10.1-658 and 10.1-659) shall be transferred from the Department of**
717 **Conservation and Recreation to the Department of Emergency Services.**

718 **5. That all certificates, permits and other regulatory and enforcement actions currently valid**
719 **under the Dam Safety Act (§ 10.1-604 et seq.) shall remain in full force and effect and shall be**
720 **transferred to and administered by the Department of Emergency Services. Upon expiration of the**
721 **current certificates or permits, any new certificates or permits issued by the Department of**
722 **Emergency Services shall bear the name of the Department of Emergency Services.**

723 **6. That any grants or loans issued by the Department of Conservation and Recreation or the**
724 **Virginia Soil and Water Conservation Board under the Flood Prevention and Protection**
725 **Assistance Regulations shall remain in full force and effect, but the administrative responsibility of**
726 **the Commonwealth of Virginia for such grants and loans shall be transferred to the Department**
727 **of Emergency Services.**