

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 175

An Act to amend and reenact §§ 10.1-408 and 10.1-413 of the Code of Virginia, relating to James State Scenic River.

[H 49]

Approved April 7, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-408 and 10.1-413 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 § 10.1-413, 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 the old VEPCO canal and the existing City Reservoir behind the Embrey Dam, or any other part of the 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, Spotsylvania, or Stafford County~~ 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; or

3. *Preclude the construction, use, operation, maintenance, replacement, or removal of any asset owned or operated by an entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 traversing the portion of the river designated by § 10.1-413 at or any point between the confluence of Allen's Creek and the James River and the confluence of David Creek and the James River.*

§ 10.1-413. James State Scenic River.

The James River in Botetourt and Rockbridge Counties, including the Towns of Buchanan and Glasgow, from its origination at the confluence of the Jackson and Cowpasture Rivers running approximately 59 miles southeastward to the Rockbridge-Amherst-Bedford County line and the James River in Nelson, Appomattox, Albemarle, Buckingham, and Fluvanna Counties from ~~one mile upstream of Warren boat ramp running approximately 20 miles to New Canton~~ *the confluence of Allens Creek running approximately 57 miles to Stearnes* are hereby designated as the James State Scenic River, components of the Virginia Scenic Rivers System.

2. That the provisions of Chapter 4 (§ 10.1-400 et seq.) of Title 10.1 of the Code of Virginia shall not apply prior to July 1, 2027, to any water supply project undertaken by a locality or authority within the portion of the James State Scenic River designated as a state scenic river pursuant to this act.