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HOUSE BILL NO. 1322

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 9, 2022)

(Patron Prior to Substitute—Delegate Hodges)

A BILL to amend and reenact § 28.2-104.1 of the Code of Virginia, relating to living shorelines.

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-104.1 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-104.1. Living shorelines; development of general permit; guidance.

A. As used in this section, unless the context requires a different meaning:

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances natural shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. When practicable, a living shoreline may enhance coastal resilience and attenuation of wave energy and storm surge.

"Other structural and organic materials" means materials or features that provide added protection or stability for the natural shoreline habitat components of a living shoreline that attenuate wave energy and do not interfere with natural coastal processes or the natural continuity of the land-water interface. "Other structural and organic materials" may be composed of a variety of natural or man-made materials, including rock, concrete, wood fiber, oyster shells, and geotextiles; however, structural features shall be free from contaminants and shall be adequately secured to prevent full or partial dislodging or detachment due to wave action or other natural forces.

B. The Commission, in cooperation with the Department of Conservation and Recreation, the Department of Environmental Quality, and local wetlands boards, and with technical assistance from the Virginia Institute of Marine Science, shall establish and implement a general permit regulation that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines in the Commonwealth. The regulation shall provide for an expedited permit review process for qualifying living shoreline projects requiring authorization under Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.). In developing the general permit, the Commission shall consult with the U.S. Army Corps of Engineers to ensure the minimization of conflicts with federal law and regulation.

C. The Commission, in cooperation with the Department of Conservation and Recreation and with technical assistance from the Virginia Institute of Marine Science, shall develop integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. The guidance shall:

1. Communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines as the preferred alternative for stabilizing tidal shorelines;

2. Identify preferred shoreline management approaches for the shoreline types found in the Commonwealth;

3. Explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

4. Recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

D. The Commission shall permit only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable. If the best available science shows that a living shoreline approach is not suitable, the Commission shall require the applicant to incorporate, to the maximum extent possible, elements of living shoreline approaches into permitted projects.