

032923214

## SENATE BILL NO. 1116

Senate Amendments in [ ] — January 29, 2003

A BILL to amend and reenact §§ 2.2-215, 10.1-559.10, 10.1-1126.1, 10.1-1194, 10.1-2125, 10.1-2129, 15.2-2220, 15.2-2245.1, 15.2-2261, 28.2-1103, 33.1-431, and 62.1-195.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 7.1, consisting of sections numbered 10.1-712 through 10.1-725, and to repeal Article 1 (§§ 10.1-2100 through 10.1-2115) of Chapter 21 of Title 10.1 of the Code of Virginia, relating to administration of the Chesapeake Bay Preservation Act.

Patrons Prior to Engrossment—Senators Whipple, Hawkins and Ticer; Delegates: Brink, Bryant, Drake and Lingamfelter

Referred to Committee on Agriculture, Conservation and Natural Resources

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

1. That §§ 2.2-215, 10.1-559.10, 10.1-1126.1, 10.1-1194, 10.1-2125, 10.1-2129, 15.2-2220, 15.2-2245.1, 15.2-2261, 28.2-1103, 33.1-431, and 62.1-195.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 7.1, consisting of sections numbered 10.1-712 through 10.1-725, as follows:

§ 2.2-215. Position established; agencies for which responsible.

The position of Secretary of Natural Resources (the "Secretary") is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, Chippokes Plantation Farm Foundation, Chesapeake Bay Local Assistance Department, Virginia Museum of Natural History and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural Resources, or reassign any agency listed above to another Secretary.

§ 10.1-559.10. Local ordinances.

A. Any county, city or town may adopt an ordinance creating a complaint, investigation and agricultural stewardship plan development program. Ordinances adopted pursuant to this section may contain only provisions which parallel §§ 10.1-559.2 and 10.1-559.3. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 10.1-559.3.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996, or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ ~~10.1-2100~~ 10.1-712 et seq.).

## CHAPTER 7.1.

## CHESAPEAKE BAY PRESERVATION ACT.

§ 10.1-712. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that: (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this chapter; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this chapter.

B. Local governments have the initiative for planning and for implementing the provisions of this chapter, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this chapter, and by providing those resources necessary to carry out and enforce the provisions of this chapter.

§ 10.1-713. Definitions.

ENGROSSED

SB1116E

58     For the purposes of this chapter, the following words shall have the meanings respectively ascribed  
59     to them:

60     "Board" means the Chesapeake Bay Local Assistance Board.

61     "Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance  
62     with criteria established pursuant to § 10.1-716.

63     "Criteria" means criteria developed by the Board pursuant to § 10.1-717 for the purpose of  
64     determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by  
65     local governments in permitting, denying, or modifying requests to rezone, subdivide, or to use and  
66     develop land in Chesapeake Bay Preservation Areas.

67     "Department" means the Department of Conservation and Recreation.

68     "Director" means the Director of the Department of Conservation and Recreation.

69     "Person" means any corporation, association, or partnership, one or more individuals, or any unit of  
70     government or agency thereof.

71     "Secretary" means the Secretary of Natural Resources.

72     "State waters" means all waters, on the surface or under the ground, wholly or partially within or  
73     bordering the Commonwealth or within its jurisdiction.

74     "Tidewater Virginia" means the following jurisdictions:

75     The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax,  
76     Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William,  
77     Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince  
78     William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria,  
79     Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport  
80     News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and  
81     Williamsburg.

82     § 10.1-714. Chesapeake Bay Local Assistance Board established.

83     A. There is hereby continued within the Department of Conservation and Recreation the Chesapeake  
84     Bay Local Assistance Board. The Board shall consist of 9 Tidewater Virginia residents appointed by the  
85     Governor, subject to confirmation by the General Assembly. The Board shall consist of at least 1  
86     individual from each Planning District in which there is located one or more Tidewater Virginia  
87     localities. Members of the Board shall be representative of, but not limited to, citizens with an interest  
88     in and experience with local government, business, the use and development of land, agriculture,  
89     forestry and the protection of water quality. Upon initial appointment, 3 members shall be appointed for  
90     4-year terms, 3 for 3-year terms, and 3 for 2-year terms. Thereafter, all members shall be appointed for  
91     terms of 4 years each. Vacancies occurring other than by expiration of a term shall be filled by the  
92     Governor in the same manner as the original appointment for the unexpired portion of the term.

93     B. The Board shall adopt rules and procedures for the conduct of its business.

94     C. The Board shall elect a chairman from among its members.

95     D. A quorum shall consist of 5 members. The decision of a majority of those members present and  
96     voting shall constitute a decision of the Board; however, a favorable vote of the majority of the Board  
97     membership is required to adopt criteria pursuant to § 10.1-717 or for any action taken by the Board  
98     under subdivision 8 of § 10.1-715. If at a meeting of the Board action will be taken under subdivision 8  
99     of § 10.1-715 with respect to the comprehensive plan, zoning or subdivision ordinance of a county, city  
100     or town, written notice of such meeting shall be given to the governing body of the locality at least 10  
101     days in advance of the meeting.

102     E. The Board shall meet at least 4 times a year, and other meetings may be held at any time or  
103     place determined by the Board or upon call of the chairman or upon written request to the chairman of  
104     any 2 members. All members shall be duly notified of the time and place of any regular or other  
105     meeting at least 10 days in advance of such meetings.

106     F. The Board shall keep a complete and accurate record of its proceedings. A copy of the record  
107     shall be available for public inspection and copying.

108     § 10.1-715. Powers and duties of the Board.

109     The Board is responsible for carrying out the purposes and provisions of this chapter and is  
110     authorized to:

111     1. Provide land use and development and water quality protection information and assistance to the  
112     various levels of local, regional, and state government within the Commonwealth;

113     2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other  
114     state agencies, regional agencies, local governments and federal agencies for the purpose of  
115     implementing this chapter;

116     3. Provide financial and technical assistance and advice to local governments and to regional and  
117     state agencies concerning aspects of land use and development and water quality protection pursuant to  
118     this chapter;

119     4. Promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.);

5. Develop, promulgate, and keep current the criteria required by § 10.1-717;

6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this chapter;

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § 10.1-717;

8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this chapter. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.);

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person;

10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of this chapter including the proper enforcement and implementation of, and continual compliance with, this chapter;

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign; and

12. Enter into contracts necessary and convenient to carry out the provisions of this chapter.

§ 10.1-716. Exclusive authority of Board to institute legal actions; Director's authority.

A. The Board shall have the exclusive authority to institute or intervene in legal and administrative actions to ensure compliance by local governing bodies with this chapter and with any criteria or regulations adopted hereunder.

B. The Director shall be vested with all the authority of the Board, including the authority granted under this section, when it is not in session, subject to such regulations as may be prescribed by the Board. However, in no event shall the Director have the authority to promulgate any final regulations.

§ 10.1-717. Board to develop criteria.

A. In order to implement the provisions of this chapter and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, that might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits that can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

§ 10.1-718. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this chapter.

§ 10.1-719. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this chapter.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate

181 *measures to protect the quality of state waters in Chesapeake Bay Preservation Areas consistent with*  
182 *the provisions of this chapter. Zoning in Chesapeake Bay Preservation Areas shall comply with all*  
183 *criteria set forth in or established pursuant to § 10.1-717.*

184 *D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of*  
185 *state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the*  
186 *provisions of this chapter. Counties, cities, and towns in Tidewater Virginia shall ensure that all*  
187 *subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by*  
188 *the Board.*

189 *E. In addition to any other remedies that may be obtained under any local ordinance enacted to*  
190 *protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in*  
191 *Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other*  
192 *ordinances:*

193 *1. Any person who: (i) violates any provision of any such ordinance or (ii) violates or fails, neglects,*  
194 *or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or*  
195 *variance or permit condition authorized under such ordinance shall, upon such finding by an*  
196 *appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation.*  
197 *Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the*  
198 *treasury of the county, city or town in which the violation occurred for the purpose of abating*  
199 *environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as*  
200 *the court may direct by order, except that where the violator is the county, city, or town itself or its*  
201 *agent, the court shall direct the penalty to be paid into the state treasury.*

202 *2. With the consent of any person who: (i) violates any provision of any local ordinance related to*  
203 *the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects,*  
204 *or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance*  
205 *or permit condition authorized under such ordinance, the local government may provide for the issuance*  
206 *of an order against such person for the one-time payment of civil charges for each violation in specific*  
207 *sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the*  
208 *county, city, or town in which the violation occurred for the purpose of abating environmental damage*  
209 *to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county,*  
210 *city, or town itself or its agent, the civil charges shall be paid into the state treasury. Civil charges*  
211 *shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this*  
212 *subsection. Civil charges may be assessed in addition to the cost of any restoration required or ordered*  
213 *by the local governmental body or official.*

214 *§ 10.1-720. Local governments outside of Tidewater Virginia may adopt provisions.*

215 *Any local government, although not a part of Tidewater Virginia, may employ the criteria developed*  
216 *pursuant to § 10.1-717 and may incorporate protection of the quality of state waters into its*  
217 *comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of*  
218 *this chapter.*

219 *§ 10.1-721. Local government requirements for water quality protection.*

220 *Local governments shall employ the criteria promulgated by the Board to ensure that the use and*  
221 *development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that*  
222 *protects the quality of state waters consistent with the provisions of this chapter.*

223 *§ 10.1-722. Advisory state review of local government decisions.*

224 *In addition to any other review requirements of this chapter, the Board shall, upon request by any*  
225 *county, city, or town, review any application for the use or development of land in that county, city, or*  
226 *town for consistency with the provisions of this chapter. Any such review shall be completed and a*  
227 *report submitted to such county, city, or town within 90 days of such request.*

228 *§ 10.1-723. Effect on other governmental authority.*

229 *The authorities granted herein are supplemental to other state, regional, and local governmental*  
230 *authority. No authority granted to a local government by this chapter shall affect in any way the*  
231 *authority of the State Water Control Board to regulate industrial or sewage discharges under Articles 3*  
232 *(§ 62.1-44.16 et seq.) and 4 (§ 62.1-44.18 et seq.) of the State Water Control Law (§ 62.1-44.2 et seq.).*  
233 *No authority granted to a local government by this chapter shall limit in any way any other planning,*  
234 *zoning, or subdivision authority of that local government.*

235 *§ 10.1-724. State agency consistency.*

236 *All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of*  
237 *Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and*  
238 *subdivision ordinances that comply with §§ [ ~~10.1-2109 and 10.1-2110~~ 10.1-719 and 10.1-720 ] .*

239 *§ 10.1-725. Vested rights protected.*

240 *The provisions of this chapter shall not affect vested rights of any landowner under existing law.*

241 *§ 10.1-1126.1. Silvicultural practices; local government authority limited.*

242 *A. Forestry, when practiced in accordance with accepted silvicultural best management practices as*

determined by the State Forester pursuant to § 10.1-1105, constitutes a beneficial and desirable use of the Commonwealth's forest resources.

B. Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

C. The provisions of this section shall apply to the harvesting of timber, provided that the area on which such harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163.

The provisions of this section shall not apply to land that has been rezoned or converted at the request of the owner or previous owner from an agricultural or rural to a residential, commercial or industrial zone or use.

Nothing in this section shall affect any requirement imposed pursuant to the Chesapeake Bay Preservation Act (§ ~~10.1-2100~~ 10.1-712 et seq.) or imposed by a locality pursuant to the designation of a scenic highway or Virginia byway in accordance with Article 5 (§ 33.1-62 et seq.) of Chapter 1 of Title 33.1.

§ 10.1-1194. Watershed Planning and Permitting Coordination Task Force created; membership; duties.

A. There is hereby created the Watershed Planning and Permitting Coordination Task Force, which shall be referred to in this article as the Task Force. The Task Force shall be composed of the Directors, or their designees, of the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Forestry, the Department of Mines, Minerals and Energy, the Chesapeake Bay Local Assistance Department and the Commissioner, or his designee, of the Department of Agriculture and Consumer Services.

B. The Task Force shall meet at least quarterly on such dates and times as the members determine. A majority of the Task Force shall constitute a quorum.

C. The Task Force shall undertake such measures and activities it deems necessary and appropriate to see that the functions of the agencies represented therein, and to the extent practicable of other agencies of the Commonwealth, and the efforts of state and local agencies and authorities in watershed planning and watershed permitting are coordinated and promoted.

§ 10.1-2125. Powers and duties of the Board.

The Board, in meeting its responsibilities under the cooperative program established by this article, after consultation with other appropriate agencies, is authorized and has the duty to:

1. Encourage and promote nonpoint source pollution control and prevention, including nutrient control and prevention, for the: (i) protection of public drinking water supplies; (ii) promotion of water resource conservation; (iii) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable beneficial uses and will support the propagation and growth of all aquatic life, including finfish and shellfish, which might reasonably be expected to inhabit them; (iv) protection of all state waters from nonpoint source pollution; (v) prevention of any increase in nonpoint source pollution; (vi) reduction of existing nonpoint source pollution; (vii) attainment and maintenance of water quality standards established under subdivisions (3a) and (3b) of § 62.1-44.15; and (viii) attainment of commitments made by the Commonwealth to water quality restoration, protection and enhancement including the goals of the Chesapeake Bay Agreement, as amended, all in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

2. Provide technical assistance and advice to local governments and individuals concerning aspects of water quality restoration, protection and improvement relevant to nonpoint source pollution.

3. Apply for, and accept, federal funds and funds from any other source, public or private, that may

304 become available and to transmit such funds to the Fund for the purpose of providing Water Quality  
305 Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

306 4. Enter into contracts necessary and convenient to carry out the provisions of this article.

307 5. Seek the assistance of other state agencies and entities including but not limited to the Chesapeake  
308 Bay Local Assistance Department, the Department of Forestry and the Virginia Soil and Water  
309 Conservation Board as appropriate in carrying out its responsibilities under this chapter.

310 § 10.1-2129. Agency coordination; conditions of grants.

311 A. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural  
312 Resources, in consultation with the State Forester and the Directors of the Departments of Environmental  
313 Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance Department, and  
314 with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water  
315 Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board,  
316 shall annually, following a public comment period of at least thirty days' duration and a public hearing,  
317 allocate moneys in the Fund between point and nonpoint source pollution, both of which shall receive  
318 allocations each year.

319 B. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural  
320 Resources, in consultation with the State Forester and the Directors of the Departments of Environmental  
321 Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance Department, and  
322 with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water  
323 Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board,  
324 shall develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for  
325 and the distribution and conditions of Water Quality Improvement Grants; and (iii) list criteria for  
326 prioritizing funding requests. In developing the guidelines the Secretary shall evaluate and consider, in  
327 addition to such other factors as may be appropriate to most effectively restore, protect and improve the  
328 quality of state waters: (i) specific practices and programs proposed in any tributary plan required by  
329 §§ 2.2-218 through 2.2-220, and the associated effectiveness and cost per pound of nutrients removed;  
330 (ii) water quality impairment or degradation caused by different types of nutrients released in different  
331 locations from different sources; and (iii) environmental benchmarks and indicators for achieving  
332 improved water quality. The process for development of guidelines pursuant to this subsection shall, at a  
333 minimum, include (i) use of an advisory committee composed of interested parties; (ii) a sixty-day  
334 public comment period on draft guidelines; (iii) written responses to all comments received; and (iv)  
335 notice of the availability of draft guidelines and final guidelines to all who request such notice.

336 In addition to those the Secretary deems advisable to most effectively restore, protect and improve  
337 the quality of state waters, the criteria for prioritizing funding requests shall include: (i) whether the  
338 location of the water quality restoration, protection or improvement project or program is within a  
339 watershed or subwatershed with documented water nutrient loading problems or adopted nutrient  
340 reduction goals; (ii) documented water quality impairment; (iii) the achievement of greater water quality  
341 improvements than that required by state or federal law; and (iv) the availability of other funding  
342 mechanisms. In the event of a local government grant application request for greater than fifty percent  
343 funding for any single project, the Directors and the Secretary shall consider the comparative revenue  
344 capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The  
345 development or implementation of cooperative programs developed pursuant to subsection B of  
346 § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement  
347 Grants from the moneys allocated to nonpoint source pollution.

348 § 15.2-2220. Duplicate planning commission authorized for certain local governments.

349 Any city with a population between 140,000 and 160,000 which is subject to the provisions of the  
350 Chesapeake Bay Preservation Act (§ 10.1-2100 10.1-712 et seq.) may by ordinance establish a duplicate  
351 planning commission solely for the purpose of considering matters arising from such Act. Sections  
352 15.2-2210 through 15.2-2222 shall apply to the commission, mutatis mutandis.

353 The procedure, timing requirements and appeal to the circuit court set forth in §§ 15.2-2258 through  
354 15.2-2261 shall apply to the considerations of this commission, mutatis mutandis.

355 To distinguish the planning commission authorized by this section from planning commissions  
356 required by § 15.2-2210, the commission established hereunder shall have the words "Chesapeake Bay  
357 Preservation" in its title.

358 The governing body of a city that establishes a commission pursuant to this section, in its sole  
359 discretion by ordinance, may abolish the duplicate planning commission.

360 § 15.2-2245.1. Stormwater management ponds; removal of trees.

361 A locality shall not require, but may permit, the removal of trees to create stormwater management  
362 ponds or facilities if the minimum adequate outfall requirements and the requirements of the Chesapeake  
363 Bay Preservation Act (§ 10.1-2100 10.1-712 et seq.) can otherwise be met.

364 § 15.2-2261. Recorded plats or final site plans to be valid for not less than five years.

365 A. An approved final subdivision plat which has been recorded or an approved final site plan,

hereinafter referred to as "recorded plat or final site plan," shall be valid for a period of not less than five years from the date of approval thereof or for such longer period as the local planning commission or other agent may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. A site plan shall be deemed final once it has been reviewed and approved by the locality if the only requirement remaining to be satisfied in order to obtain a building permit is the posting of any bonds and escrows.

B. 1. Upon application of the subdivider or developer filed prior to expiration of a recorded plat or final site plan, the local planning commission or other agent may grant one or more extensions of such approval for additional periods as the commission or other agent may, at the time the extension is granted, determine to be reasonable, taking into consideration the size and phasing of the proposed development, the laws, ordinances and regulations in effect at the time of the request for an extension.

2. If the commission or other agent denies an extension requested as provided herein and the subdivider or developer contends that such denial was not properly based on the ordinance applicable thereto, the foregoing considerations for granting an extension, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of land subject to the recorded plat or final site plan, provided that such appeal is filed with the circuit court within sixty days of the written denial by the commission or other agency.

C. For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

D. Application for minor modifications to recorded plats or final site plans made during the periods of validity of such plats or plans established in accordance with this section shall not constitute a waiver of the provisions hereof nor shall the approval of minor modifications extend the period of validity of such plats or plans.

E. The provisions of this section shall be applicable to all recorded plats and final site plans valid on or after January 1, 1992. Nothing contained in this section shall be construed to affect (i) any litigation concerning the validity of a site plan pending prior to January 1, 1992, or any such litigation nonsuited and thereafter refiled; (ii) the authority of a governing body to impose valid conditions upon approval of any special use permit, conditional use permit or special exception; (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the greatest extent possible, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ ~~10.1-2100~~ 10.1-712 et seq.); or (iv) the application to individual lots on recorded plats or parcels of land subject to final site plans of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.

§ 28.2-1103. Virginia Estuarine and Coastal Research Reserve System created; purpose; Virginia Institute of Marine Science to administer.

A. There is hereby created the Virginia Estuarine and Coastal Research Reserve System (the System) for the purpose of establishing a system of protected sites representative of the Commonwealth's estuarine and coastal lands in which research and long-term monitoring will be conducted in support of the Commonwealth's coastal resource management efforts.

B. The System shall be established and administered by the Virginia Institute of Marine Science of The College of William and Mary. The Institute shall consult with and seek the advice of the Virginia Coastal Program and of those state agencies responsible for administering programs of the Virginia Coastal Program; the Marine Resources Commission; the Department of Game and Inland Fisheries; the Department of Conservation and Recreation; the Department of Health; and the Department of Environmental Quality; and the Chesapeake Bay Local Assistance Department.

C. Sites included within the System shall be within any jurisdiction included in Tidewater Virginia as defined in § ~~10.1-2101~~ 10.1-713.

D. The Institute may accept the dedication, by voluntary act of the owner, of areas it deems suitable for the System. Dedication may include transfer of fee simple title or other interest in land to the Commonwealth or may be in the form of voluntary agreement with the owner to include the area within the System. Estuarine and Coastal Research Reserve System sites may also be acquired by gift, grant, or purchase.

E. The instrument of dedication may:

1. Contain restrictions and other provisions relating to management, use, development, transfer, and

public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this article;

2. Define, consistent with the purposes of the article, the respective rights and duties of the owner and of the Commonwealth and provide procedures to be followed in case of violations of the restriction;

3. Recognize and create reversionary right, transfers upon conditions or with limitations, and gifts over; and

4. Vary in provisions from one System site to another, in accordance with differences in the characteristics and conditions of the several areas.

F. Public departments, commissions, boards, counties, municipalities, corporations, colleges, universities and all other agencies and instrumentalities of the Commonwealth and its political subdivisions may enter into agreements with the Institute to dedicate suitable areas within their jurisdictions as Estuarine and Coastal Research Reserve System sites.

G. Subject to the approval of the Governor and the Attorney General, the Commonwealth may enter into amendments to the instrument of dedication upon finding that the amendment will not permit an impairment, disturbance, use, or development of the area that is inconsistent with the provisions of this article. If a fee simple estate in the Estuarine and Coastal Research Reserve System is not held by the Institute under this article, no amendment may be made without the written consent of the owner of the other interests therein.

H. The Institute is empowered to enter into agreements with federal agencies holding title to lands within Tidewater Virginia to include suitable portions of agency holdings in the Virginia Estuarine and Coastal Research Reserve System.

I. All lands within the system shall be used primarily for research and education. Other public uses such as hunting and recreation on those research reserve lands owned by the Institute shall be allowed, consistent with these primary uses. Improvements and alterations to research reserve lands owned by the Institute shall be limited to those consistent with these uses.

§ 33.1-431. Creation of district.

A. A district may be created in a county by a resolution of the governing body. Any such resolution shall be considered only upon the petition, to the governing body, of the owners of at least fifty-one percent of either the land area or the assessed value of real property that (i) is within the boundaries of the proposed district and (ii) has been zoned for commercial or industrial use or is used for such purposes. Any proposed district within a county may include any real property within a town or towns within the boundaries of such county.

B. The petition to the governing body shall:

1. Set forth the name and describe the boundaries of the proposed district;

2. Describe the transportation improvements proposed within the district;

3. Propose a plan for providing such transportation improvements within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto that the petitioners request for the proposed district;

4. Describe the benefits that can be expected from the provision of such transportation improvements within the district; and

5. Request the governing body to establish the proposed district for the purposes set forth in the petition.

C. Upon the filing of such a petition, the governing body shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or own taxable real property within the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property within a town is included in the proposed district, the governing body shall deliver a copy of the petition and notice of the public hearing to the town council at least thirty days prior to the public hearing, and the town council may by resolution determine if it wishes such property located within the town to be included within the proposed district and shall deliver a copy of any such resolution to the governing body at the public hearing required by this section. Such resolution shall be binding upon the governing body with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least ten days shall intervene between the third publication and the date set for the hearing.

D. If the governing body finds the creation of the proposed district would be in furtherance of the county's comprehensive plan for the development of the area; in the best interests of the residents and owners of real property within the proposed district; and in furtherance of the public health, safety, and welfare, the governing body may pass a resolution, which shall be reasonably consistent with the



petition, creating the district and providing for the appointment of an advisory board in accordance with this chapter. The resolution shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications that shall be in force in the district upon its creation, together with any related criteria and a term of years, not to exceed twenty years, as to which each such zoning classification and each related criterion set forth therein shall remain in force within the district without elimination, reduction, or restriction, except (i) upon the written request or approval of the owner of any property affected by a change, (ii) as required to comply with the provisions of the Chesapeake Bay Preservation Act (~~§ 40.1-2100~~ 10.1-712 et seq.) or the regulations adopted pursuant thereto, (iii) as required to comply with the provisions of the federal Clean Water Act (33 U.S.C. § 1342(P)) and regulations promulgated thereunder by the federal Environmental Protection Agency, or (iv) as specifically required to comply with any other state or federal law.

A resolution creating a district shall also provide that the district shall expire either (i) fifty years from the date upon which the resolution is passed or (ii) when the district is abolished in accordance with this chapter. After the public hearing, the governing body shall deliver a certified copy of its proposed resolution creating the district to the petitioning landowners or their attorneys-in-fact. Any petitioning landowner may then withdraw his signature on the petition, in writing, at any time prior to the vote of the governing body. In the case where any signatures on the petition are withdrawn, the governing body may pass the proposed resolution only upon certification that the petition continues to meet the provisions of this section. After the governing body has adopted the resolution creating the district, the district shall be established and the name of the district shall be "The ..... Transportation Improvement District."

§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.

A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in ~~§ 40.1-2404~~ 10.1-713, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in ~~§ 40.1-2404~~ 10.1-713, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the Chesapeake Bay Local Assistance Board pursuant to ~~§ 40.1-2407~~ 10.1-717; or

2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of oil or gas into the environment during drilling, production, and transportation on:

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and Energy shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. The Department of Environmental Quality shall:

1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than thirty days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to the Department of Environmental Quality; and

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines, Minerals and Energy, within ninety days after notification and receipt of the environmental impact assessment from the Department.

D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it has considered the findings and recommendations of the Department of Environmental Quality.

E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this

550 section.

551 F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where  
552 drilling is not prohibited by the provisions of subsection A of this section only if:

553 1. For directional drilling, the person has the permission of the owners of all lands to be directionally  
554 drilled into;

555 2. The person files an oil discharge contingency plan and proof of financial responsibility to  
556 implement the plan, both of which have been filed with and approved by the State Water Control Board.  
557 For purposes of this section, the oil discharge contingency plan shall comply with the requirements set  
558 forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility  
559 required shall take into account the type of operation, location of the well, the risk of discharge or  
560 accidental release, the potential damage or injury to state waters or sensitive natural resource features or  
561 the impairment of their beneficial use that may result from discharge or release, the potential cost of  
562 containment and cleanup, and the nature and degree of injury or interference with general health, welfare  
563 and property that may result from discharge or accidental release;

564 3. All land-disturbing activities resulting from the construction and operation of the permanent  
565 facilities necessary to implement the contingency plan and the area within the berm will be located  
566 outside of those areas described in subsection A of this section;

567 4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal  
568 amounts of runoff;

569 5. Persons certified in blowout prevention are present at all times during drilling;

570 6. Conductor pipe is set as necessary from the surface;

571 7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface  
572 or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as  
573 defined in § 62.1-10, whichever is deeper;

574 8. Freshwater-based drilling mud is used during drilling;

575 9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated  
576 fluids or other contaminated fluids;

577 10. Multiple blow-out preventers are employed; and

578 11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1  
579 and regulations promulgated thereunder.

580 G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection F of this section  
581 shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

582 H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of  
583 the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of  
584 oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify  
585 the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the  
586 Secretaries shall develop a joint report to the Governor and the General Assembly assessing the  
587 environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology;  
588 economic impacts; regulatory initiatives; operational standards; and other matters related to the  
589 production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor  
590 has had an opportunity to review the report and make recommendations, in the public interest, for  
591 legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session,  
592 has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation  
593 has become effective. The report by the Secretaries and the Governor's recommendations shall be  
594 completed within eighteen months of the findings of the Director of the Department of Mines, Minerals  
595 and Energy.

596 **2. That Article 1 (§§ 10.1-2100 through 10.1-2115) of Chapter 21 of Title 10.1 of the Code of**  
597 **Virginia is repealed.**

598 **3. That as of July 1, 2003, the Department of Conservation and Recreation shall be deemed the**  
599 **successor in interest to the Chesapeake Bay Local Assistance Department to the extent that this**  
600 **act transfers powers and duties. All rights, title, and interest in and to any real or tangible**  
601 **personal property vested in the Chesapeake Bay Local Assistance Department to the extent that**  
602 **this act transfers powers and duties, as of the effective date of this act, shall be transferred and**  
603 **taken as standing in the name of the Department of Conservation and Recreation.**

604 **4. That the Governor may transfer an appropriation or any portion thereof within a state agency**  
605 **established, abolished, or otherwise affected by the provisions of this act, or from one such agency**  
606 **to another, to support the changes in organization or responsibility resulting from or required by**  
607 **the provisions of this act.**

608 **5. That the Governor may transfer employees within any state agency established or otherwise**  
609 **affected by the provisions of this act, or from such agency to another, to support changes in the**  
610 **organization or responsibility resulting from or required by the provisions of this act.**

611 **6. That the provisions of this act shall not be construed to require the reappointment of any**

612 member of the Chesapeake Bay Local Assistance Board and each such member shall continue to  
613 serve the term for which he has been appointed.  
614 [ 7. That the Secretary of Natural Resources shall consider the benefits of additional consolidation  
615 or co-location of the Commonwealth's Coastal and Chesapeake Bay Programs and report any  
616 action taken as a result of this consideration to the General Assembly by December 1, 2004. ]  
617 [ 8. That the regulations promulgated by the Chesapeake Bay Local Assistance Board to carry out  
618 the provisions of the Chesapeake Bay Preservation Act, under Chapter 21 (§ 10.1-2100 et seq.) of  
619 Title 10.1, shall be in full force and effect under this act. ]

ENGROSSED

SB1116E