

2005 SESSION

REPRINT

CHAPTER 41

An Act to amend and reenact §§ 2.2-215, 10.1-1186.5, 10.1-1194, 10.1-2101, 10.1-2106, 10.1-2125, 10.1-2129, and 28.2-1103 of the Code of Virginia, and to repeal § 10.1-2105 of the Code of Virginia, relating to administration of the Chesapeake Bay Preservation Act.

[S 1103]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-215, 10.1-1186.5, 10.1-1194, 10.1-2101, 10.1-2106, 10.1-2125, 10.1-2129, and 28.2-1103 of the Code of Virginia are amended and reenacted 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, Council on Indians, 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.

§ 10.1-1186.5. Creation of the Low Impact Development Assessment Task Force.

A. The Director of the Department shall appoint a Low Impact Development Assessment Task Force. The task force shall operate as an entity within the Department. The task force shall have ~~44~~ 10 members appointed by the Director and shall include a representative of the Department of Conservation and Recreation; ~~of the Chesapeake Bay Local Assistance Department~~, the Chesapeake Bay Foundation, the Virginia Farm Bureau Federation, the Home Builders Association of Virginia, the Low Impact Development Coalition, the Virginia Association of Counties, the Virginia Municipal League, and three citizen members not affiliated with the organizations designated in this subsection.

B. The task force shall (i) develop a certification process for low impact development techniques in achieving quantifiable pollution prevention or abatement results, (ii) develop such other guidance for local governments and the general public as necessary to promote a more complete understanding of the most effective use of low impact development techniques, (iii) recommend changes to existing statutes and regulations to facilitate the use of low impact development techniques, and (iv) develop a model ordinance for use by local governments.

C. The task force shall submit a preliminary report to the Director by October 1, 2003, and a final report to the Director by October 1, 2004. The Director shall report to the General Assembly on the activities and recommendations of the task force by November 1 of each year in which he receives a report.

D. For purposes of this section, "low impact development" means a site-specific system of design and development techniques that can serve as an effective, low-cost alternative to existing stormwater and water quality control methods and that will reduce the creation of storm runoff and pollution and potentially reduce the need to treat or mitigate water pollution.

§ 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.

§ 10.1-2101. Definitions.

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

"Board" means Chesapeake Bay Local Assistance Board.

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance

with criteria established pursuant to § 10.1-2107.

"Criteria" means criteria developed by the Board pursuant to § 10.1-2107 of this chapter for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

"Department" means the ~~Chesapeake Bay Local Assistance~~ Department of Conservation and Recreation.

"Director" means the ~~Executive~~ Director of the ~~Chesapeake Bay Local Assistance~~ Department of Conservation and Recreation.

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

"Secretary" means the Secretary of Natural Resources.

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

"Tidewater Virginia" means the following jurisdictions:

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

§ 10.1-2106. Powers and duties of Director.

A. ~~The Director, under the direction and control of the Secretary, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.~~

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulations.

C. ~~B.~~ The Director shall be vested with all the authority of the Board, including the authority granted by § 10.1-2104, when it is not in session, subject to such regulations as may be prescribed by the Board.

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

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

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

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

A. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the State Forester and the Directors of the Departments of Environmental Quality and Conservation and Recreation ~~and of the Chesapeake Bay Local Assistance Department~~, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board, shall annually, following a public comment period of at least ~~thirty~~ 30 days' duration and a public hearing, allocate moneys in the Fund between point and nonpoint source pollution, both of which shall receive allocations each year.

B. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the State Forester and the Directors of the Departments of Environmental Quality and Conservation and Recreation ~~and of the Chesapeake Bay Local Assistance Department~~, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board, shall develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality Improvement Grants; and (iii) list criteria for prioritizing funding requests. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other factors as may be appropriate to most effectively restore, protect and improve the quality of state waters: (i) specific practices and programs proposed in any tributary plan required by §§ 2.2-218 through 2.2-220, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types of nutrients released in different locations from different sources; and (iii) environmental benchmarks and indicators for achieving improved water quality. The process for development of guidelines pursuant to this subsection shall, at a minimum, include (i) use of an advisory committee composed of interested parties; (ii) a ~~sixty~~ 60-day public comment period on draft guidelines; (iii) written responses to all comments received; and (iv) notice of the availability of draft guidelines and final guidelines to all who request such notice.

In addition to those the Secretary deems advisable to most effectively restore, protect and improve the quality of state waters, the criteria for prioritizing funding requests shall include: (i) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (ii) documented water quality impairment; (iii) the achievement of greater water quality improvements than that required by state or federal law; and (iv) the availability of other funding mechanisms. In the event of a local government grant application request for greater than ~~fifty~~ 50 percent funding for any single project, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

§ 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.

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.

2. That § 10.1-2105 of the Code of Virginia is repealed.

3. That the regulations of the Chesapeake Bay Local Assistance Board and any attendant forms, guidance documents, legal opinions, or other legal documents produced by or for the Board shall remain in full force and effect until amended, modified, or repealed.

4. That references to the Chesapeake Bay Local Assistance Department in regulation, local ordinance, guidance, or otherwise shall mean the Department of Conservation and Recreation, and similarly, references to the Executive Director of the Chesapeake Bay Local Assistance Department shall mean the Director of the Department of Conservation and Recreation.

5. That the Chesapeake Bay Local Assistance Board shall have the authority to amend, modify, or delete provisions in the Chesapeake Bay Preservation Area Designation and Management Regulations (9-VAC 10-20 et seq.) in order to implement Chapter 372 of the Acts of Assembly of 2004 and the provisions of this act. Those amendments to the regulations necessitated by these acts shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.