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HOUSE BILL NO. 2168

Offered January 14, 2009

Prefiled January 14, 2009

A *BILL to amend the Code of Virginia by adding a section numbered 10.1-603.8:1, relating to stormwater nonpoint nutrient runoff offsets.*

Patrons—Abbitt and Bulova

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 10.1-603.8:1 as follows:

§ 10.1-603.8:1. Stormwater nonpoint nutrient offsets.

A. A permit-issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria, through the use of, either solely or in combination with on-site best management practices, either or both of the following off-site measures: (i) subject to subsections B, C, D, and E, the permittee's acquisition of nonpoint nutrient offsets certified under the Chesapeake Bay Nutrient Exchange Program (§ 62.1-44.19:12 *et seq.*) in the same tributary and (ii) those included in a permit-issuing authority's regional (watershedwide) stormwater management plan. To foster the reduction of nutrients entering state waters and to promote the development of private market-based nonpoint nutrient offsets, a permit-issuing authority shall give priority to offsets identified in clause (i). No permit-issuing authority shall allow the use of either of these off-site measures to address water quantity control requirements or in contravention of local water quality-based limitations consistent with determinations made pursuant to subsection B of § 62.1-44.19:14.

B. A permit-issuing authority may allow the use of Chesapeake Bay Nutrient Exchange Program certified nonpoint nutrient offsets when the permit applicant demonstrates to the satisfaction of the permit-issuing authority that (i) on-site best management practices have been considered to the maximum extent practicable and (ii) site constraints, cost of on-site best management practices, difficulty in monitoring or maintenance of on-site best management practices, local conditions, or technical uncertainty regarding a best management practice makes use of on-site best management practices less practicable than use of such offsets. Documentation of the permittee's acquisition of such offsets shall be provided to the permit-issuing authority in a certification from an offset broker documenting the number of offsets acquired. The offset broker shall pay the permit-issuing authority a water quality enhancement fee equal to six percent of the amount paid by the permittee for the offsets. If a locality is not the permit-issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund. If the permit-issuing authority is a locality, such fees shall be used solely in the locality where the associated stormwater permit applies for inspection and maintenance of stormwater best management practices, stormwater educational effort, or efforts designed to protect or improve local water quality.

C. A permit-issuing authority shall use a 1:1 ratio of the Chesapeake Bay Nutrient Exchange Program certified nonpoint nutrient offsets to the site's postdevelopment nonpoint nutrient runoff compliance requirement.

D. No permit-issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless off-site options have been considered and found not available.

E. For purposes of this section, "tributary" shall have the same meaning as provided in § 62.1-44.19:13.

INTRODUCED

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