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HOUSE BILL NO. 1830

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 21, 2011)

(Patron Prior to Substitute—Delegate Scott, E.T.)

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-104.5, 10.1-104.6, and 10.1-104.7, relating to agriculture; resource management plans.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 10.1 an article numbered 1.1, consisting of sections numbered 10.1-104.5, 10.1-104.6, and 10.1-104.7, as follows:

Article 1.1.

Resource Management Plans.

§ 10.1-104.5. Resource management plans; effect of implementation; exclusions.

A. Notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.6 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

B. The presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

C. Landowners or operators who implement and maintain a resource management plan in accordance with this article shall be eligible for matching grants for agricultural best management practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department in accordance with program eligibility rules and requirements. Such landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2.

E. Any personal information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions.

§ 10.1-104.6. Resource management plans; criteria.

A. The Soil and Water Conservation Board shall by regulation, and in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality, specify the criteria to be included in a resource management plan.

B. The regulations shall:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;

2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified total maximum daily load (TMDL) implementation plan for the Chesapeake Bay or other local total maximum daily load water quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting

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60 and verification;

61 3. Provide for a process by which an on-farm assessment of all reportable best management
62 practices currently in place, whether as part of a cost-share program or through voluntary
63 implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient,
64 sediment, and bacteria reductions;

65 4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake
66 Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality
67 requirements of the Commonwealth; and

68 5. Specify that the required components of each resource management plan shall be based upon an
69 individual on-farm assessment. Such components shall comply with on-farm water quality objectives as
70 set forth in subdivision B 4, including best management practices identified in this subdivision and any
71 other best management practices approved by the Board or identified in the Chesapeake Bay Watershed
72 Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

73 a. For all cropland or specialty crops such components shall include the following, as needed and
74 based upon an individual on-farm assessment:

75 (1) A nutrient management plan that meets the nutrient management specifications developed by the
76 Department;

77 (2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water
78 quality objectives and consistent with Natural Resources Conservation Service standards and
79 specifications;

80 (3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural
81 Resources Conservation Service; and

82 (4) Cover crops meeting best management practice specifications as determined by the Natural
83 Resources Conservation Service or the Virginia Agricultural Best Management Practices Cost-Share
84 Program.

85 b. For all hayland, such components shall include the following, as needed and based upon an
86 individual on-farm assessment:

87 (1) A nutrient management plan that meets the nutrient management specifications developed by the
88 Department;

89 (2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water
90 quality objectives and consistent with Natural Resources Conservation Service standards and
91 specifications; and

92 (3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural
93 Resources Conservation Service.

94 c. For all pasture, such components shall include the following, as needed and based upon an
95 individual on-farm assessment:

96 (1) A nutrient management plan that meets the nutrient management specifications developed by the
97 Department;

98 (2) A system that limits or prevents livestock access to perennial streams; and

99 (3) A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of
100 "T," as defined by the Natural Resources Conservation Service.

101 § 10.1-104.7. Regulations under this article.

102 Regulations adopted by the Board for the enforcement of this article shall be subject to the
103 requirements set out in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the
104 Administrative Process Act (§ 2.2-4000 et seq.), and shall be published in the Virginia Register of
105 Regulations. The Board shall convene a stakeholder group to assist in development of these regulations,
106 with representation from agricultural and environmental interests as well as Soil and Water
107 Conservation Districts. All other provisions of the Administrative Process Act shall not apply to the
108 adoption of any regulation pursuant to this article. After the close of the 60-day comment period, the
109 Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15
110 days after publication in the Virginia Register of Regulations, unless the Board has withdrawn or
111 suspended the regulation or a later date has been set by the Board. The Board shall also hold at least
112 one public hearing on the proposed regulation during the 60-day comment period. The notice for such
113 public hearing shall include the date, time, and place of the hearing.