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SENATE BILL NO. 1099

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact § 10.1-603.8:1 of the Code of Virginia, relating to stormwater nonpoint nutrient offsets.*

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 10.1-603.8:1 of the Code of Virginia is amended and reenacted as follows:**

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

A. As used in this section:

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).

"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that has adopted a local stormwater management program.

"Tributary" has the same meaning as in § 62.1-44.19:13.

B. A permit issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary.

C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient offsets in contravention of local water quality-based limitations: (i) consistent with determinations made pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved by the Board.

D. A permit issuing authority ~~may only~~ shall allow the use of ~~nonpoint nutrient offsets off-site options in the priority established in subsection I~~ when ~~the~~:

1. The permit applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site;

2. *Less than five acres of land will be disturbed; or*

3. *The postconstruction phosphorous control requirement is less than 10 pounds.*

E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the permit issuing authority in a certification from an offset broker documenting the number of phosphorus nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the offset generating facility. 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 nonpoint nutrient offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund established by § 10.1-603.4:1. 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 programs, or programs designed to protect or improve local water quality.

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff

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59 compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

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

63 I. In considering off-site options, the permit issuing authority shall give priority to ~~the use of options~~
64 *in the following order: (i) nonpoint nutrient offsets unless generated by private entities; (ii) off-site*
65 *developer options approved pursuant to the Board's regulations; (iii) a local fee-in-lieu-of, pro-rata*
66 *share, or similar program has been approved by the Board as being substantially equivalent in nutrient*
67 *reduction benefits. However, prior to approval by the Board, there shall be a rebuttable presumption that*
68 *any local government fee-in-lieu-of, pro-rata share, or similar program is substantially equivalent in*
69 *nutrient reduction benefits; and (iv) other off-site options available through the Board's regulations.* The
70 Board shall establish criteria for determining whether any such local program is substantially equivalent,
71 which shall be used during the local stormwater management program approval process in § 10.1-603.3.

72 J. The Board may establish by regulation a stormwater nutrient program for portions of the
73 Commonwealth that do not drain into the Chesapeake Bay.

74 K. Nutrient reductions obtained through nonpoint nutrient offsets shall be credited toward compliance
75 with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia
76 Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location
77 where the activity for which the nonpoint nutrient offsets are used takes place. If the activity for which
78 the nonpoint nutrient offsets are used does not discharge to a municipal separate storm sewer system, the
79 nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

80 L. A permit issuing authority shall allow the full or partial substitution of nonpoint nutrient offsets
81 for existing on-site nutrient controls when (i) the nonpoint nutrient offsets will compensate for 10 or
82 fewer pounds of the annual phosphorous requirement associated with the original land-disturbing
83 activity or (ii) existing on-site controls are not functioning as anticipated and the use of nonpoint
84 nutrient offsets will account for the deficiency.

85 M. To the extent available, acquisition of nonpoint nutrient offsets shall be required in compliance
86 actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance
87 and (ii) for permanent nutrient control deficiencies.