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HOUSE JOINT RESOLUTION NO. 129

Offered January 11, 2012

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Requesting the Attorney General of Virginia to explore a challenge to the constitutionality of the Total Maximum Daily Load regulations promulgated by the United States Environmental Protection Agency. Report.

Patron—Minchew

Referred to Committee on Agriculture, Chesapeake and Natural Resources

WHEREAS, the Chesapeake Bay is a national treasure and an ecological wonder whose cleanliness and vibrancy Virginians are committed to ensuring for future generations; and

WHEREAS, Virginia was not a party to the case of *American Canoe Association et al. v. the United States EPA*, 54 F. Supp. 2d 621 (E.D. Va. 1999), and was not a party to the consent decree that resulted from the settlement of that case; and

WHEREAS, the Environmental Protection Agency has, pursuant to President Obama's Executive Order 13508 Strategy for Restoring and Protecting the Chesapeake Bay Watershed, signed on May 12, 2009, issued an unfunded mandate to Virginia and other states in the Chesapeake Bay watershed to adopt strict regulations for all storm waters and treated waste waters to conform to prescribed Total Maximum Daily Load regulations; and

WHEREAS, the Environmental Protection Agency's new standards for Virginia are the result of a rushed process in which the Commonwealth had insufficient time to respond or comply; and

WHEREAS, acting in accord with the unfunded federal mandate, the Virginia Department of Environmental Quality has, under protest, filed with the Environmental Protection Agency a compliance plan that, if implemented, will be an unfunded mandate upon all localities in the Chesapeake Bay watershed to develop expensive protocols for storm waters and treated waste waters entering all tributaries of the Bay; and

WHEREAS, the Environmental Protection Agency's actions appear to be premised upon an unconstitutional exercise of Congressional Commerce Clause power in violation of the 10th Amendment of the Constitution of the United States; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Attorney General of Virginia be requested to explore a challenge to the constitutionality of the Total Maximum Daily Load regulations promulgated by the United States Environmental Protection Agency. In conducting the study, the Attorney General is requested to confer with the Secretary of Natural Resources and the staff of the Department of Environmental Quality to determine the scope and the compliance deadline of the unfunded federal mandate and, after this review, to take such legal actions as may be required to offer a timely challenge to the exercise of federal power by the Environmental Protection Agency, before affected localities are required to comply with the Total Maximum Daily Load regulations.

The Attorney General is requested to submit to the Division of Legislative Automated Systems an executive summary and report of his progress in meeting the request of this resolution no later than the first day of the 2013 Regular Session of the General Assembly. The executive summary and report are to be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

INTRODUCED

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