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HOUSE JOINT RESOLUTION NO. 243

Offered January 23, 2012

Requesting the Department of Environmental Quality to study the benefits and costs of seeking authority from the U.S. Environmental Protection Agency to administer the § 404 permitting program under the federal Clean Water Act. Report.

Patrons—Byron and Cosgrove

Unanimous consent to introduce

Referred to Committee on Rules

WHEREAS, in 2000, the General Assembly enacted legislation to ensure protection of Virginia's wetlands and, at the same time, streamline the permitting process by reducing the number of projects that required redundant state and federal permits; and

WHEREAS, both the State Water Control Board and the U.S. Army Corps of Engineers regulate construction and dredging projects that impact Virginia's wetlands and surface water; and

WHEREAS, the current structure of these programs means that many of Virginia's businesses and local governments need both a state and a federal permit establishing resource protection requirements when they build homes, construct roads, or undertake other projects that destroy wetlands or impact surface waters; and

WHEREAS, in 2002, Virginia sought and was granted a State Programmatic General Permit (SPGP), which was a good first step in reducing duplicative permitting processes; and

WHEREAS, on June 1, 2007, by agreement between the Department of Environmental Quality and the U.S. Army Corps of Engineers, the U.S. Army Corps of Engineers amended the SPGP to allow the State Water Control Board to be the sole permitting authority for all wetland impacts up to one acre for development projects and up to one-third acre for transportation projects and for all stream impacts up to 2,000 linear feet without U.S. Army Corps of Engineers participation; and

WHEREAS, the U.S. Army Corps of Engineers insists on maintaining jurisdiction over wetland impacts above one acre; and

WHEREAS, a dual federal/state permitting process can slow development and impede economic development; and

WHEREAS, such a dual process can lead to duplication and inefficiencies; and

WHEREAS, the requirement to deal with two separate agencies with two sets of regulations can present challenges for applicants; and

WHEREAS, the requirements of the U.S. Army Corps of Engineers permitting process can be unpredictable and inconsistent across the state; and

WHEREAS, Virginia is in a better position than a federal agency to create a predictable and sustainable permitting environment across the state;

WHEREAS, if the EPA approved Virginia's assumption of the § 404 permitting program, the Commonwealth would be the sole permitting authority for all projects, regardless of size, in state wetlands and surface waters "other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto." (§ 404(g) of the Clean Water Act, 33 U.S.C. 1344); and

WHEREAS, Virginia's assumption of the § 404 permitting program will eliminate duplication and minimize unnecessary delay to ensure timely and efficient permitting that can foster economic development and ensure environmental protection; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Environmental Quality be requested to study the benefits and costs of seeking authority from the U.S. Environmental Protection Agency (EPA) to administer the § 404 permitting program under the federal Clean Water Act. In conducting the study, the Department shall determine whether there are appropriate exemptions for small impoundments and whether there is an appropriate mitigation ratio for ponds and ephemeral streams. The Department shall convene a representative group of stakeholders to assist it in determining the benefits and costs of seeking such authority from EPA.

All agencies of the Commonwealth shall provide assistance to the Department of Environmental Quality for this study, upon request.

INTRODUCED

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59 The Department of Environmental Quality shall complete its meetings by November 30, 2012, and
60 shall submit to the Governor and the General Assembly an executive summary and a report of its
61 findings and recommendations for publication as a House or Senate document. The executive summary
62 and report shall be submitted as provided in the procedures of the Division of Legislative Automated
63 Systems for the processing of legislative documents and reports no later than the first day of the 2013
64 Regular Session of the General Assembly and shall be posted on the General Assembly's website.