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SENATE BILL NO. 402

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact § 10.1-2128.2 of the Code of Virginia, relating to nutrient reduction efforts; assessment; report.*

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2128.2 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-2128.2. Nutrient Offset Fund established; purposes.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Nutrient Offset Fund, hereafter referred to as "the Subfund," which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by the Director of the Department of Environmental Quality. The Subfund shall be established on the books of the Comptroller. All amounts appropriated and such other moneys as may be made available to the Subfund from any other source, public or private, shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes stated in subsection B. Expenditures and disbursements from the Subfund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Director of the Department of Environmental Quality.

B. The Director of the Department of Environmental Quality shall use moneys in the Subfund only to purchase nutrient offsets that achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law. The Director of the Department of Environmental Quality may enter into long-term contracts with producers of nutrient offsets to purchase such offsets using moneys from the Subfund.

1. Priority shall be given to nutrient offsets produced from facilities that generate *energy, including electricity or heat; steam; or hot water* from animal waste.

2. *Until January 1, 2026, initial priority shall be given to facilities that (a) accomplish the oxygen-starved gasification of up to 75,000 tons of poultry litter, poultry manure, or dairy manure per year on or from farms in Rockingham, Augusta, Page, or Shenandoah County and (b) simultaneously produce nutrient offsets and generate energy by employing the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) National Conservation Practice Standard Code 735 (Waste Gasification Facility). A determination of initial priority shall not exclude the appropriation or expenditure of additional Nutrient Offset Funds for the deployment or banking of offsets generated by other best management practices or other nutrient reduction technologies.*

3. *After adjustments are made using the appropriate Chesapeake Bay nutrient load delivery factors for nitrogen and phosphorous, the Nutrient Offset Fund or the Department of Environmental Quality shall purchase nutrient offsets having initial priority from the owner or operator of the gasification facility on a one-to-one or pound-for-pound basis pursuant to subsection D of § 62.1-44.19:15. The Fund or the Department shall then sell the purchased offsets to farmers or localities within the Potomac or Shenandoah River watersheds.*

C. The Director of the Department of Environmental Quality shall make nutrient offsets purchased pursuant to subsection B available for sale to owners or operators of new or expanded facilities pursuant to § 62.1-44.19:15, and to permitted facilities pursuant to § 62.1-44.19:18.

D. For the purposes of this section, a "nutrient offset" means a nutrient reduction certified by the Department of Environmental Quality as a load allocation, point source nitrogen credit, or point source phosphorus credit under the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.).

2. That the Department of Environmental Quality and the Department of Conservation and Recreation jointly conduct a 12-month assessment of the success of the operation of the first gasification facility converting more than 10,000 tons of animal waste per year to receive initial priority in helping the Commonwealth, localities, and farmers meet their respective nutrient reduction obligations under the Virginia Chesapeake Bay Phase II Watershed Implementation Plan. The results of the assessment shall be reported to the Secretary of Natural Resources and

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59 the General Assembly and shall be submitted as provided in the procedures of the Division of
60 Legislative Automated Systems for the processing of legislative documents and reports and shall be
61 posted on the General Assembly's website.