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SENATE BILL NO. 1309

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 24, 2013)

(Patron Prior to Substitute—Senator Hanger)

A *BILL to amend and reenact §§ 10.1-104.2, 10.1-104.2:1, 10.1-505, and 10.1-546.1 of the Code of Virginia, relating to Virginia Soil and Water Conservation Board duties.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-104.2, 10.1-104.2:1, 10.1-505, and 10.1-546.1 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-104.2. Voluntary nutrient management training and certification program.

A. The Department shall operate a voluntary nutrient management training and certification program to certify, *in accordance with regulations adopted by the Virginia Soil and Water Conservation Board pursuant to subsection D*, the competence of persons preparing nutrient management plans for the purpose of (i) assisting landowners and operators in the management of land application of fertilizers, municipal sewage sludges, animal manures, and other nutrient sources for agronomic benefits and for the protection of the Commonwealth's ground and surface waters and (ii) assisting owners and operators of agricultural land and turf to achieve economic benefits from the effective management and application of nutrients.

B. The Department shall develop a flexible, tiered, Voluntary Nutrient Management Plan Program to assist owners and operators of agricultural land and turf in (i) preparing nutrient management plans for their own property that meet the nutrient management specifications developed by the Department and (ii) achieving economic benefits for owners and operators as a result of effective nutrient management. The Department shall convene a stakeholder group composed of individuals representing agricultural and environmental organizations to assist in the development of this Program. Individuals representing the agricultural stakeholders shall include both farmers who currently operate farms and agribusiness representatives who serve the farming community. Individuals representing environmental stakeholders shall include at least two members and a staff member of the Virginia Delegation to the Chesapeake Bay Commission and one representative from the Rappahannock River Basin Commission. The Program shall: (a) allow owners and operators of agricultural lands and turf who are not required to have a certified nutrient management plan to prepare their own nutrient management plans; (b) include a tiered approach for lands of different sizes, agricultural production, and nutrient applications; (c) consider similar online programs in other states or sponsored by universities; (d) address how the nutrient management plans can be verified and receive credit in the Chesapeake Bay Watershed Model for properties in the Chesapeake Bay watershed; (e) begin testing the software for the Program by July 1, 2013, and begin full implementation by July 1, 2014; and (f) include any other issues related to developing a flexible, tiered, Voluntary Nutrient Management Plan Program for owners and operators of agricultural lands and turf.

C. Any personal or proprietary information collected pursuant to subsection B 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 in all other instances of federal or state regulatory actions.

D. ~~The Department~~ *Virginia Soil and Water Conservation Board* shall, ~~with the approval of the Virginia Soil and Water Conservation Board~~, adopt regulations:

1. Specifying qualifications and standards for individuals to be deemed competent in nutrient management plan preparation, and providing for the issuance of documentation of certification to such individuals;

2. Specifying conditions under which a certificate issued to an individual may be suspended or revoked;

3. Providing for criteria relating to the development of nutrient management plans for various agricultural and urban agronomic practices, including protocols for use by laboratories in determining soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purpose of nutrient management;

4. Establishing fees to be paid by individuals enrolling in the training and certification programs;

5. Providing for the performance of other duties and the exercise of other powers by the Director as may be necessary to provide for the training and certification of individuals preparing nutrient management plans; and

6. Giving due consideration to relevant existing agricultural certification programs.

E. There is hereby established a special, nonreverting fund in the state treasury to be known as the Nutrient Management Training and Certification Fund. The fund shall consist of all fees collected by the Department pursuant to subsection D. No part of the fund, either principal or interest, shall revert to the general fund. The fund shall be administered by the Director, and shall be used solely for the payment of expenses of operating the nutrient management training and certification program.

F. For the purposes of this section, the term "turf" shall have the same meaning as defined in § 3.2-3600.

§ 10.1-104.2:1. Nitrogen application rates; regulations.

A. The ~~Department~~ *Virginia Soil and Water Conservation Board* shall adopt regulations that amend the application rates in the Virginia Nutrient Management Standards and Criteria by incorporating into such regulations *or the documents incorporated by reference* the recommended application rates for nitrogen in lawn fertilizer and lawn maintenance fertilizer and the recommended application rates for "slow or controlled release fertilizer" and "enhanced efficiency lawn fertilizer," as such terms are defined and adopted or proposed for adoption by the American Association of Plant Food Control Officials, as described in the Virginia Department of Agriculture and Consumer Services' December 2011 "Report on the Use of Slowly Available Nitrogen in Lawn Fertilizer and Lawn Maintenance Fertilizer."

B. Such ~~regulations~~ *regulatory amendment provided for in subsection A* shall follow a fast-track regulatory process established pursuant to § 2.2-4012.1 of the Administrative Process Act and shall be adopted no later than July 1, 2014.

§ 10.1-505. Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

1. To give or loan appropriate financial and other assistance to district directors in carrying out any of their powers and programs.

2. To keep district directors informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between the districts.

3. To ~~coordinate~~ *oversee* the programs of the districts ~~so far as this may be done by advice and consultation.~~

4. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of the Commonwealth, in the work of the districts.

5. To disseminate information throughout the Commonwealth concerning the activities and programs of the districts, and to encourage the formation of such districts in areas where their organization is desirable.

6. To assist persons, associations, and corporations engaged in furthering the programs of the districts; to encourage and assist in the establishment and operation of such associations and corporations, and to authorize financial assistance to the officers and members of such associations and corporations in the discharge of their duties.

7. To receive, review, approve or disapprove applications for assistance in planning and carrying out works of improvement under the Watershed Protection and Flood Prevention Act (Public Law 566 - 83rd Congress, as amended), and to receive, review and approve or disapprove applications for any other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require such action by a state agency.

8. To advise and recommend to the Governor approval or disapproval of all work plans developed under Public Law 83-566 and Public Law 78-535 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.

9. To provide for the conservation of soil and water resources, control and prevention of soil erosion, flood water and sediment damages thereby preserving the natural resources of the Commonwealth.

10. *To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § 10.1-104.1 and (ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § 10.1-104.2:1.*

11. *To provide, from such funds appropriated for districts, financial assistance for the administrative, operational and technical support of districts.*

§ 10.1-546.1. Delivery of Agricultural Best Management Practices Cost-Share Program.

Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § 10.1-2128.1, under the direction of the ~~Department~~ *Board*, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.

2. **That the regulations adopted by the Department of Conservation and Recreation and directed for transfer from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board in accordance with this act shall remain in full force and effect until**

122 transferred to the Virginia Soil and Water Conservation Board.
123 3. That the initial actions of the Virginia Soil and Water Conservation Board to adopt, with
124 necessary amendments, the nutrient management training and certification regulations transferred
125 by this act from the Department of Conservation and Recreation to the Board shall be exempt
126 from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. Such
127 regulations shall remain in full force and effect until altered, amended, or rescinded by the
128 Virginia Soil and Water Conservation Board.
129 4. That after the transfer of the nutrient management training and certification program, if it is
130 determined that additional amendments to the regulations are necessary for Virginia Soil and
131 Water Conservation Board implementation of the program in accordance with this act, the
132 regulatory actions necessary shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of
133 Title 2.2 of the Code of Virginia except that the Board shall provide an opportunity for public
134 comment on the regulatory actions.
135 5. That guidance of the Department of Conservation and Recreation relating to the regulations to
136 be transferred by this act shall remain in effect until amended or repealed.
137 6. That any regulatory action initiated by the Department of Conservation and Recreation to
138 amend the regulations being transferred by this act may be continued by the Virginia Soil and
139 Water Conservation Board at the time of the transfer of the regulations.