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SENATE BILL NO. 704

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 4, 2020)

(Patron Prior to Substitute—Senator Mason)

A *BILL to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 3.8, containing articles numbered 1, 2, and 3, consisting of sections numbered 62.1-44.119 through 62.1-44.123, relating to Chesapeake Bay watershed implementation plan initiatives; civil penalty.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 3.8, containing articles numbered 1, 2, and 3, consisting of sections numbered 62.1-44.119 through 62.1-44.123, as follows:

CHAPTER 3.8.

CHESAPEAKE BAY WATERSHED IMPLEMENTATION PLAN INITIATIVES.

Article 1.

Chesapeake Bay Watershed Implementation Plan.

§ 62.1-44.119. Target date.

In recognition of the ecological, cultural, economic, historical, and recreational value of the Chesapeake Bay as well as the Commonwealth's commitment to the Chesapeake Bay Partnership and the 2014 Chesapeake Bay Agreement, the target date to achieve the water quality goals contained in Virginia's final Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan shall be December 31, 2025.

Article 2.

Nutrient Management Plans for Chesapeake Bay Cropland.

§ 62.1-44.120. Definitions.

As used in this article, unless the context requires a different meaning:

"Chesapeake Bay cropland" means cropland in the Commonwealth located in the Chesapeake Bay watershed on which fertilizer, manure, sewage sludge, or another compound containing nitrogen or phosphorous is applied. Chesapeake Bay cropland does not include lands on which bovines are pastured.

"Department" means the Department of Conservation and Recreation.

"Nutrient management plan" means a plan prepared by a certified nutrient management planner pursuant to § 10.1-104.2 and regulations adopted thereunder.

"Operator" means any person who exercises managerial control over Chesapeake Bay cropland.

§ 62.1-44.121. Chesapeake Bay cropland; nutrient management plans.

A. Any operator of 50 or more acres of Chesapeake Bay cropland shall maintain and implement an approved nutrient management plan.

B. The Department shall review any nutrient management plan submitted pursuant to subsection A within 30 days of submission and shall determine whether such nutrient management plan was prepared by a certified nutrient management planner. If the Department determines that such plan was prepared by a certified nutrient management planner, the Department shall approve such plan. An approved nutrient management plan shall be revised and resubmitted for approval to the Department every five years thereafter. If the Department determines that such nutrient management plan was not prepared by a certified nutrient management planner, the Department shall provide to the person who is required to submit the nutrient management plan a list of items required to be corrected, and such person shall have 30 days to resubmit the plan.

C. Any nutrient management plan required pursuant to subsection A shall be made available to the Department upon request.

D. Any information collected by the Department pursuant to subsection B or C is excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Article 3.

Chesapeake Bay Watershed Livestock Stream Exclusion.

§ 62.1-44.122. Definitions.

As used in this article, unless the context requires a different meaning:

"Department" means the Department of Conservation and Recreation.

"Perennial stream" means a body of water depicted as perennial on the most recent U.S. Geological Survey 7-1/2-minute topographic quadrangle map (scale 1:24,000) or identified by a method, established in regulations approved by the Department, that does not require field verification.

"Stream exclusion practice" means protection of a body of water by fencing, including temporary

60 *fencing, or another physical means sufficient to exclude livestock from such body of water. A stream*
61 *exclusion practice may include designated livestock stream crossings that satisfy criteria established in*
62 *regulations adopted by the Department.*

63 **§ 62.1-44.123. Bovine livestock stream exclusion.**

64 *Any person who owns property in the Chesapeake Bay watershed on which 20 or more bovines are*
65 *pastured shall install and maintain stream exclusion practices sufficient to exclude all such bovines from*
66 *any perennial stream in the watershed.*

67 **2. That the provisions of Chapter 3.8 (§ 62.1-44.119 et seq.) of Title 62.1 of the Code of Virginia,**
68 **as created by this act, shall not become effective unless, on or after July 1, 2026, the Secretary of**
69 **Agriculture and Forestry and the Secretary of Natural Resources jointly determine that none of**
70 **the Commonwealth's commitments in the Chesapeake Bay Total Maximum Daily Load Phase III**
71 **Watershed Implementation Plan has been satisfied by the (i) coverage of a sufficient portion of**
72 **Chesapeake Bay cropland by nutrient management plans, (ii) installation of a sufficient number of**
73 **livestock stream exclusion practices, or (iii) combination of other agricultural best management**
74 **conservation practices.**

75 **3. That the Secretary of Natural Resources and the Secretary of Agriculture (the Secretaries) shall**
76 **convene a stakeholder advisory group (the Group) to review annual progress toward the**
77 **implementation of the Commonwealth's agricultural commitments in the Chesapeake Bay Total**
78 **Maximum Daily Load Phase III Watershed Implementation Plan. The Group shall (i) develop a**
79 **process to assist any operator of 50 or more acres of Chesapeake Bay cropland in developing a**
80 **nutrient management plan that meets the requirements of the goals to be achieved by the target**
81 **date and (ii) develop a plan for the stream exclusion program in the Chesapeake Bay watershed.**
82 **Such plans and progress reports shall include identification of priority regions, operators affected**
83 **within each region, initiatives to enhance progress, an accounting of funding received toward the**
84 **agricultural commitments, shortfalls remaining, and the consequences of such funding shortfalls.**
85 **The Group shall make recommendations to the Governor regarding necessary revisions to Chapter**
86 **3.8 (§ 62.1-44.119 et seq.) of Title 62.1 of the Code of Virginia, as created by this act, to ensure**
87 **that the Commonwealth's commitments are achieved by December 31, 2025. The Group shall**
88 **include representatives from the Department of Conservation and Recreation, soil and water**
89 **conservation districts, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council,**
90 **the Chesapeake Bay Commission, the Chesapeake Bay Foundation, Virginia Cooperative**
91 **Extension, the Virginia Cattlemen's Association, the Virginia Association of the Commissioners of**
92 **the Revenue, and the Virginia Association of Counties. The Group shall also include two legislative**
93 **members, one each from the Senate and the House of Delegates. Such legislative members shall be**
94 **members of the Virginia Delegation of the Chesapeake Bay Commission.**

95 **4. That the Department of Conservation and Recreation shall, no later than July 1, 2021, establish**
96 **through the Soil and Water Conservation Technical Advisory Committee and with stakeholder**
97 **input a portable stream fencing practice for inclusion in the Virginia Agricultural Best**
98 **Management Practice Cost-Share Program.**

99 **5. That the Virginia Soil and Water Conservation Board, as established pursuant to § 10.1-502 of**
100 **the Code of Virginia, shall establish, no later than December 31, 2020, the methodology for**
101 **identifying perennial streams, as defined in § 62.1-44.122 of the Code of Virginia, as created by**
102 **this act.**