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SENATE BILL NO. 747

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 19, 2020)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend the Code of Virginia by adding a section numbered 62.1-44.19:21.2, relating to nutrient and sediment credit generation and transfer.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 62.1-44.19:21.2 as follows:

§ 62.1-44.19:21.2. *Nutrient and sediment credit generation and transfer; public body.*

A. Except as provided in subsection B, the only nonpoint nutrient credits that shall be transferred pursuant to either (i) § 62.1-44.15:35 or (ii) subsections B, C, and D of § 62.1-44.19:21 are nutrient credits generated by the private sector, including credits generated by the private sector pursuant to an agreement with a public body.

B. Other than for purposes of subsection A of § 62.1-44.19:21, nutrient credits or sediment credits generated by a project undertaken by a public body, including a locality, and certified by the Department shall be used only by such public body and only for the purpose of compliance with the provisions of this chapter by such public body's project. For the purposes of this subsection, the term "public body's project" means a project for which the public body is the named permittee and for which no third party conducts any lease, sale, grant, transfer, or use of the project or its nutrient or sediment credits.

C. Any publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, as an alternative to acquiring and using certain perpetual nutrient credits pursuant to subsection B of § 62.1-44.19:21, permanently retire a portion of its wasteload allocation if (i) notice is given by such applicant to the Department, (ii) a ratio of 10 pounds of nitrogen allocation for each pound of phosphorous allocation retired is also permanently retired and applied toward the land-disturbing project, and (iii) the general permit registration list is modified to reflect the permanent retirement of the wasteload allocation. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of phosphorous allocation may be applied toward a single project's postconstruction phosphorus control requirement.

D. Nothing in this section shall be construed to prevent any (i) public body, including a locality, from entering into an agreement with a private third party for the development of a project to generate nonpoint nutrient credits on terms and conditions upon which the public body and private third party agree or (ii) locality from operating a locality pollutant loading pro rata share program for nutrient reductions established pursuant to § 15.2-2243.