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HOUSE BILL NO. 1329

Offered January 22, 1996

A BILL to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 44, consisting of sections numbered 3.1-1081 through 3.1-1101, relating to the Agricultural Stewardship Act.

Patrons—Deeds, Barlow, Bryant, Cooper, Councill, Jackson, Landes, Putney, Ruff, Shuler, Spruill, Watkins and Weatherholtz; Senators: Hawkins, Holland, Waddell and Woods

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 44, consisting of sections numbered 3.1-1081 through 3.1-1101 as follows:

CHAPTER 44.**AGRICULTURAL STEWARDSHIP ACT.**

§ 3.1-1081. Short title.

This chapter shall be known and may be cited as the "Agricultural Stewardship Act."

§ 3.1-1082. Definitions.

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

"Agricultural activity" means any action or omission used in a farming operation or facility to produce agricultural products including, but not limited to, cotton, tobacco, peanuts, soybeans, potatoes, vegetables, fruits, livestock, livestock products, poultry, aquatic organisms raised in aquaculture facilities, any other agricultural products having domestic or foreign markets, and all nursery, horticultural or floricultural products.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Body of peers" or "peers" means the members of the Soil and Water Conservation Board who have been appointed pursuant to §10.1-502 by the Governor and who are farmers.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Complaint" means a written allegation made by any person to the Commissioner that an individual owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"Economical" means affordable to the owner or operator.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land on which an agricultural activity occurs.

"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.

"Plan consultant" means an individual who, by virtue of his education or experience, has expertise in areas of: (i) management of soils, water, animals, plants, plant nutrients, pests, animal feeds, cropping systems, or animal production systems to reduce or to prevent pollution; (ii) design, engineering or construction of physical facilities to reduce or to prevent pollution; or (iii) management of farm finances. "Plan consultant" may include, but is not limited to, persons associated with a soil and water conservation district, the Cooperative Extension Service, the Natural Resources Conservation Service, or any other state agency.

"Pollution" means any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" means effective, economical means of reducing or preventing pollution emanating from an agricultural activity. Examples of stewardship measures include, but are not limited to, the agricultural Best Management Practices set forth in the United States Department of Agriculture's "Field Office Technical Guide".

"Substantial" means more than *de minimis*.

§ 3.1-1083. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which a regulation of the State Water Control Board or Article 12 (§§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1, applies.

§ 3.1-1084. Complaint; investigation; right of entry.

Any person may submit a complaint to the Commissioner. The Commissioner shall investigate any

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HB1329

60 complaint he receives to determine whether evidence exists to support the allegations made in the
61 complaint, unless:

62 1. The Commissioner has previously received a complaint regarding the agricultural activity and
63 either has investigated or is investigating the agricultural activity;

64 2. The pollution complained of was caused by an Act of God; or

65 3. The agricultural activity is excluded under § 3.1-1083 from this chapter.

66 If the Commissioner determines that an investigation is not warranted, he shall so inform the person
67 who submitted the complaint. The Commissioner's investigation shall be conducted within 21 days after
68 the day the Commissioner receives the complaint. If the Commissioner determines that the agricultural
69 activity is excluded from this chapter under § 3.1-1083, he shall refer the complaint to the agency
70 charged with enforcement of the law or regulation that gave rise to the exclusion.

71 § 3.1-1085. Right of Entry.

72 When investigating a complaint pursuant to § 3.1-1084, the Commissioner may, at reasonable times
73 and under reasonable circumstances after having given the owner and operator of the agricultural
74 activity 24 hours notice, enter the property on which the activity complained of is occurring to examine
75 agricultural activities or examine records related to the act or omission alleged to be causing pollution.

76 § 3.1-1086. Determination of need for stewardship plan; plan development.

77 A. If, after having investigated an agricultural activity pursuant to a complaint submitted under this
78 chapter, the Commissioner determines that (i) substantial evidence exists to prove that an agricultural
79 activity that is the subject of a complaint is creating or, if not changed, will create substantial pollution,
80 and (ii) that the operator of such agricultural activity is not utilizing generally accepted stewardship
81 measures, then the Commissioner shall prepare a list of plan consultants and cost share programs that
82 are or may be available to the operator or owner of the agricultural activity. As soon as is practicable
83 after having developed the list, the Commissioner shall provide the list, a copy of the complaint, and the
84 findings of the Commissioner's investigation to the operator or owner of the agricultural activity.

85 B. Within 21 days from the date on which the owner or operator receives the list, complaint and
86 findings from the Commissioner, he shall notify the Commissioner in writing of (i) one or more plan
87 consultants who has agreed to work with the owner or the operator to develop a plan for the
88 agricultural activity; and (ii) the date, no more than 60 days from the date on which the owner or
89 operator received the information from the Commissioner, on which the owner or the operator will sign
90 and deliver a copy of the agricultural stewardship plan for the agricultural activity to the Commissioner
91 for approval.

92 § 3.1-1087. Contents of plan.

93 A. The Commissioner shall approve an agricultural stewardship plan submitted by an owner or
94 operator pursuant to subsection 3.1-1086 if the plan includes the following:

95 1. A map of the site on which the agricultural activity is occurring showing the soils, water bodies
96 and other salient characteristics of the site, as well as the location of each stewardship measure;

97 2. Temporary and permanent stewardship measures, as appropriate, that address the pollution the
98 Commissioner identified as a result of his investigation; and

99 3. A provision requiring the owner to notify the Commissioner of any significant changes in
100 conditions that might affect the efficacy of the plan.

101 B. If the plan does not satisfy the requirements of this section, the Commissioner may amend the
102 plan before approving it.

103 § 3.1-1088. Confidentiality of Complaint, notification of complainant.

104 The Commissioner shall not disclose any information regarding the complaint or the agricultural
105 activity to any person except the owner and operator of the agricultural activity that is the subject of
106 the complaint and any plan consultants involved in developing a plan for the agricultural activity until
107 (i) the Commissioner refers the complaint to another agency, or (ii) the Commissioner approves the
108 stewardship plan for the agricultural activity. Upon approving the stewardship plan for the agricultural
109 activity, the Commissioner shall notify the person who made the complaint that the plan has been
110 approved.

111 § 3.1-1089. Implementation of plan.

112 The owner and operator shall have six months from the date on which the Commissioner approves
113 the plan to implement the plan. The Commissioner may grant an extension of up to 90 days based on
114 the availability of technical or financial assistance. The Commissioner may grant an extension of up to
115 a year if the plan requires construction of any structure.

116 3.1-1090. Body of peers; powers and duties.

117 The body of peers shall consist of the members of the Soil and Water Conservation Board who have
118 been appointed pursuant to § 10.1-502 by the Governor and who are farmers. The body of peers shall
119 hear appeals, impose special orders and impose civil penalties in accordance with the provisions of this
120 chapter. A majority of the members of the body of peers shall constitute a quorum for the performance
121 of any duty imposed by this chapter. The concurrence of a majority of the members of the body of peers

present and voting shall be required for all determinations.

§ 3.1-1091. Appeal of Commissioner's determination.

A. Any owner or operator who is aggrieved by the Commissioner's determination that the owner's or operator's agricultural activity is creating, or if not changed, will create substantial pollution, may appeal such determination to the body of peers within 30 days of the date on which he received the findings of the Commissioner's investigation. Any owner or operator who is aggrieved by any amendments made by the Commissioner to the owner or operator's agricultural stewardship plan may appeal such amendments to the body of peers within thirty days of the date on which the Commissioner approved the plan. Such appeals shall be in writing and may be filed with any member of the body of peers.

B. The body of peers shall hold a hearing on the appeal within 120 days of the date on which the appeal was filed. If the peers determine that insufficient evidence exists to support the Commissioner's determination that an agricultural stewardship plan is necessary, they shall so inform the operator and the person who submitted the complaint, and the operator shall not be required to create or implement an agricultural stewardship plan. If the peers determine that sufficient evidence exists to support the Commissioner's determinations that a plan is necessary, then the owner or operator shall have six months from the date of the peers' decision to implement the plan, subject to any extensions allowed by the Commissioner under § 3.1-1089. The body of peers may eliminate any of the Commissioner's amendments to the plan.

§ 3.1-1092 Special orders.

The body of peers may issue a special order to the owner or the operator of an agricultural activity who fails to deliver an agricultural stewardship plan pursuant to § 3.1-1086, or who fails to implement or to maintain any stewardship measures included in an agricultural stewardship plan approved by the Commissioner pursuant to this chapter. The special order may require the operator to cease all or part of the agricultural activity or to implement specified stewardship measures within a stated period of time. No special order may be issued until after a hearing with reasonable notice to the owner or to the operator, or both, of the time, place and purpose thereof. The special order shall become effective not less than five days after notice as provided in § 3.1-1095. The body of peers may issue an order to an owner or operator who has been assessed a civil penalty pursuant to § 3.1-1094.

§ 3.1-1093. Form of decisions and orders.

All decisions and orders issued by the peers shall be in writing and shall contain the explicit findings of fact and conclusions of law upon which the decision or order is based. A certified copy of the decision shall be delivered or mailed by certified mail, return receipt requested, to the owner or to the operator.

§ 3.1-1094. Civil penalties.

A. The body of peers may assess a civil penalty against any owner or operator who fails to deliver an agricultural stewardship plan pursuant to § 3.1-1086 or fails to implement or maintain the stewardship measures identified in a plan approved by the Commissioner or fails to comply with a special order. No civil penalty assessed pursuant to this section shall exceed \$100,000.

B. No civil penalty may be imposed until a hearing has been conducted in accordance with § 9-6.14:12, unless the parties consent to informal proceedings. Notice of the opportunity for a hearing shall be provided as required by § 3.1-1095.

C. No civil penalty shall be assessed against an owner or operator whose failure to implement his agricultural stewardship plan or whose failure to reduce or to prevent pollution is caused by acts or events beyond the control of the owner or operator or is the direct result of unusual, severe weather events (such as floods or droughts) which have caused damage that could not reasonably have been prevented.

D. The peers shall develop a matrix of civil penalties showing the approximate range of civil penalties for various types of violations of this chapter. The matrix shall be published in the Virginia Register by July 1, 1997.

§ 3.1-1095. Notice.

The owner or operator to whom an order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of the owner or of the operator, or by personal delivery by an agent of the Commissioner, and time limits specified shall be counted from the date of receipt or, if mailed and the owner or the operator is not at the last known address, from the date upon which the return receipt is received by the Commissioner.

§ 3.1-1096. Enforcement by injunction.

Any owner or operator failing to obey a special order may be compelled in a proceeding instituted in any circuit court by the Commissioner to obey the order by injunction or other appropriate remedy, without the necessity of showing that an adequate remedy at law does not exist.

§ 3.1-1097. Liens.

183 If a person who is required to pay a civil penalty fails to do so, the body of peers may direct the
184 Commissioner to transmit a true copy of the peers' final order assessing such penalty to the clerk of the
185 court of any county or city wherein it is ascertained that the person owing such penalty has any estate;
186 and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be
187 recorded, and shall index the same in the name of the Commonwealth as well as in the name of the
188 person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on
189 the property within such county or city of the person owing the civil penalty in the amount of the civil
190 penalty. The Commissioner may collect civil penalties which are owed in the same manner as provided
191 by law in respect to judgment of a court of record. All civil penalties, regardless of the manner in which
192 they are collected, shall be paid into the state treasury and deposited by the State Treasurer into the
193 Agricultural Stewardship Fund pursuant to § 3.1-1099.

194 § 3.1-1098. Judicial Review.

195 An owner or operator who is aggrieved by an order or decision of the body of peers is entitled to
196 judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1
197 et seq.).

198 § 3.1-1099. Agricultural Stewardship Fund established; administration and disbursements.

199 A. There is hereby established a special, non-reverting fund in the state treasury to be known as the
200 Agricultural Stewardship Fund, hereafter referred to as the Fund, to be used for cost share financial
201 assistance for the implementation of stewardship measures. The Fund shall be a nonlapsing fund
202 consisting of moneys received and credited to the Fund by the State Treasurer for civil penalties
203 assessed pursuant to this chapter. Interest earned in moneys in the Fund shall be credited to the Fund.
204 The Fund shall be established on the books of the State Comptroller. Any money remaining in the Fund
205 at the end of any biennium shall not revert to the general fund but shall remain in the Fund.

206 B. Disbursement of moneys from the Fund shall be made by the State Comptroller at the written
207 request of the Commissioner. Disbursements from the Fund shall be made on a first-come, first served
208 basis for the purposes set forth in subsections A and B of this section, including, but not limited to,
209 capital, engineering, construction and initial operating costs.

210 3.1-1100. Delegation of duties.

211 The Commissioner may delegate to an authorized representative any of the duties imposed by this
212 chapter except those provided in §§ 3.1-1086 and 3.1-1087.

213 3.1-1101. Local ordinances.

214 B. Any county, city or town may adopt an ordinance creating a complaint, investigation and
215 agricultural stewardship plan development program. Ordinances adopted pursuant to this section may
216 contain only provisions which parallel §§ 3.1-1083, 3.1-1084, 3.1-1086, 3.1-1087 and 3.1-1088. No such
217 ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner
218 who fails to deliver or implement a plan. If an owner or operator fails to deliver or implement a plan,
219 the local governing body may submit a complaint to the Commissioner as provided in § 3.1-1084.

220 B. This section shall not apply to any ordinance (i) in existence on November 1, 1995, or (ii)
221 adopted pursuant to the Chesapeake Bay Preservation Act (§§ 10.1-2100 et seq.).