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HOUSE BILL NO. 1445

Offered January 22, 1996

A BILL to amend and reenact §§ 10.1-2100, 10.1-2102, 10.1-2103, 10.1-1205, 10.1-2106 and 10.1-2107 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-2105.1, relating to transfer of Bay Program and coastal resource management responsibilities to the Chesapeake Bay Local Assistance Department.

Patrons—Bloxom, Cox, Dillard, Fisher, Harris, Howell and Morgan

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-2100, 10.1-2102, 10.1-2103, 10.1-2105, 10.1-2106 and 10.1-2107 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-2105.1 as follows:

§ 10.1-2100. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that: (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this chapter; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this chapter; and (v) that one agency have lead responsibility for matters related to Virginia's commitments to the regional Chesapeake Bay Program restoration efforts and for coastal resources management.

B. Local governments have the initiative for planning and for implementing the provisions of this chapter *applicable to them*, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this chapter, and by providing those resources necessary to carry out and enforce the provisions of this chapter.

§ 10.1-2102. Chesapeake Bay Local Assistance Board established.

A. There is hereby established the Chesapeake Bay Local Assistance Board. The Board shall consist of nine Tidewater Virginia residents appointed by the Governor, subject to confirmation by the General Assembly. The Board shall consist of at least one individual from each Planning District in which there is located one or more Tidewater Virginia localities. Members of the Board shall be representative of, but not limited to, citizens with an interest in and experience with local government, business, the use and development of land, agriculture, forestry and the protection of water quality. ~~Upon initial appointment, three members shall be appointed for four-year terms, three for three-year terms, and three for two-year terms. Thereafter, all~~ All members shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment for the unexpired portion of the term.

B. The Board shall adopt rules and procedures for the conduct of its business.

C. The Board shall elect a chairman from among its members.

D. A quorum shall consist of five members. The decision of a majority of those members present and voting shall constitute a decision of the Board; however, a favorable vote of the majority of the Board membership is required to adopt criteria pursuant to § 10.1-2107 of this chapter or for any action taken by the Board under subdivision 8 of § 10.1-2103. If at a meeting of the Board action will be taken under subdivision 8 of § 10.1-2103 with respect to the comprehensive plan, zoning or subdivision ordinance of a county, city or town, written notice of such meeting shall be given to the governing body of the locality at least ten days in advance of the meeting.

E. The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request to the chairman of

60 any two members. All members shall be duly notified of the time and place of any regular or other
61 meeting at least ten days in advance of such meetings.

62 F. The Board shall keep a complete and accurate record of its proceedings. A copy of the record
63 shall be available for public inspection and copying.

64 § 10.1-2103. Powers and duties of the Board.

65 The Board is responsible for carrying out the purposes and provisions of this chapter and is
66 authorized to:

67 1. Provide land use and development and water quality protection information and assistance to the
68 various levels of local, regional and state government within the Commonwealth.

69 2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other
70 state agencies, regional agencies, local governments and federal agencies for the purpose of
71 implementing this chapter.

72 3. Provide financial and technical assistance and advice to local governments and to regional and
73 state agencies concerning aspects of land use and development and water quality protection pursuant to
74 this chapter.

75 4. Promulgate regulations pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.).

76 5. Develop, promulgate and keep current the criteria required by § 10.1-2107.

77 6. Provide technical assistance and advice or other aid for the development, adoption and
78 implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land
79 use and development and water quality protection measures utilizing criteria established by the Board to
80 carry out the provisions of this chapter.

81 7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas
82 in accordance with the criteria developed pursuant to § 10.1-2107.

83 8. Ensure that local government comprehensive plans, zoning ordinances and subdivision ordinances
84 are in accordance with the provisions of this chapter. Determination of compliance shall be in
85 accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

86 9. ~~Make application for federal funds that may become available under federal acts and to transmit~~
87 ~~such funds when applicable to any appropriate person.~~

88 10. Take administrative and legal actions to ensure compliance by counties, cities and towns with the
89 provisions of this chapter.

90 11. Perform such other duties and responsibilities related to the use and development of land and the
91 protection of water quality as the Secretary may assign.

92 12. Enter into contracts necessary and convenient to carry out the provisions of this chapter.

93 § 10.1-2105. Creation of Department; appointment of Director.

94 There is hereby created, in the Office of the Secretary of Natural Resources, the Chesapeake Bay
95 Local Assistance Department. ~~The Department shall provide staff assistance to the Board and shall~~
96 ~~perform all duties incident to carrying out the purposes of this chapter.~~ The Department shall be headed
97 by an Executive Director. The Director shall be appointed by the Governor to serve at his pleasure for a
98 term coincident with his own or until a successor shall be appointed and qualified. The Director shall be
99 subject to confirmation by the General Assembly if it is in session when the appointment is made, and if
100 not then in session, at the next succeeding session.

101 § 10.1-2105.1. Powers and duties of the Department.

102 *The Department shall have the following general powers and duties, any of which the Director may*
103 *delegate as appropriate:*

104 1. *Employ such personnel as may be required to carry out the duties of the Department;*

105 2. *Provide staff assistance to the Board and perform all duties incident to carrying out the purposes*
106 *of this chapter;*

107 3. *Make and enter into all contracts and agreements necessary or incidental to the performance of*
108 *its duties and the execution of its powers, including but not limited to, contracts with the United States,*
109 *other states, other agencies and political subdivisions of the Commonwealth;*

110 4. *Make application for and accept federal funds as they may become available under federal acts*
111 *and to transmit such funds when applicable to any appropriate person;*

112 5. *Make application for and accept grants from the United States government, its agencies and*
113 *instrumentalities, and any other source. To these ends, the Department shall have the power to comply*
114 *with such conditions and execute such agreements as may be necessary, convenient or desirable;*

115 6. *Act as lead agency for and to perform such acts as are necessary to carry out Virginia's*
116 *commitments to the regional Chesapeake Bay Program and to implement coastal resources management.*

117 7. *Administer, under the direction of the Board and the Secretary, funds appropriated to it for*
118 *Chesapeake Bay and coastal resources management programs and make contracts related thereto;*

119 8. *Initiate and supervise programs designed to educate citizens regarding the relationships between*
120 *population, land use and development, ecology, water quality and coastal resource management;*

121 9. *Perform all acts necessary or convenient to carry out the duties conferred by law.*

§ 10.1-2106. Powers and duties of Director.

A. The Director, under the direction and control of the Secretary, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulations.

C. The Director shall be vested with all the authority of the Board when it is not in session, subject to such regulations as may be prescribed by the Board.

D. The Director shall establish divisions through which the functions of the Department and the corresponding powers and duties may be exercised and discharged. The Director shall appoint competent persons to direct the various functions and programs of the Department, and may delegate any of the powers and duties conferred or imposed by law upon him.

§ 10.1-2107. Board to develop criteria.

A. In order to ~~implement the provisions of this chapter and~~ to assist counties, cities and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations which establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations which establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits which can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. Criteria shall be adopted by July 1, 1989.