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HOUSE BILL NO. 2663

Offered January 20, 1997

A BILL to amend and reenact § 2.1-51.12:2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-51.12:2.1 and by adding in Title 62.1 a chapter numbered 23.3, containing sections numbered 62.1-241.13 and 62.1-241.14, relating to tributary plan implementation and development.

Patrons—Rust, Albo, Barlow, Bloxom, Bryant, Callahan, Cantor, Clement, Connally, Cooper, Crouch, Darner, Dudley, Grayson, Griffith, Hargrove, Ingram, Keating, Kilgore, Lovelace, Marshall, May, McClure, Mims, Moran, Morgan, O'Brien, Parrish, Puller, Rhodes, Rollison, Scott, Van Landingham, Watts and Way

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-51.12:2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-51.12:2.1 and by adding in Title 62.1 a chapter numbered 23.3, containing sections numbered 62.1-241.13 and 62.1-241.14, as follows:

§ 2.1-51.12:2. Tributary plan content; development timelines.

A. Each tributary plan developed pursuant to § 2.1-51.12:1 shall include the following:

1. Recommended specific strategies, goals, commitments and methods of implementation designed to achieve the nutrient goals of the 1987 Chesapeake Bay Agreement and the 1992 amendments to that agreement signed by the Governors of Virginia, Maryland, and Pennsylvania, the Mayor of the District of Columbia, the Administrator of the United States Environmental Protection Agency and the Chairman of the Chesapeake Bay Commission, collectively known as the Chesapeake Executive Council.

2. A report on progress made pursuant to the "Chesapeake Bay Basinwide Toxics Reduction and Prevention Strategy" signed by the Chesapeake Executive Council on October 14, 1994, that is applicable to the tributary for which the plan is prepared.

3. A report on progress on the "Submerged Aquatic Vegetation Restoration Goals" signed by the Chesapeake Executive Council on September 15, 1993, that is applicable to the tributary for which the plan is prepared.

4. A report on progress related to the objectives of the "Local Government Partnership Initiative" signed by the Chesapeake Executive Council on November 30, 1995.

5. Specifically identified recommended state, local and private responsibilities and actions, with associated timetables, for implementation of the plan, to include the (i) person, official, governmental unit, organization or other responsible body; (ii) specific programmatic and environmental benchmarks and indicators for tracking and evaluating implementation and progress; (iii) opportunities, if appropriate, to achieve nutrient reduction goals through nutrient trading; (iv) estimated state and local benefits derived from implementation of the proposed alternatives in the plan; (v) state funding commitments and specifically identified sources of state funding as well as a method for considering alternative or additional funding mechanisms; (vi) state incentives for local and private bodies for assisting with implementation of the plans; and (vii) estimate and schedule of costs for the recommended alternatives in each plan.

6. Scientific documentation to support the recommended actions in a plan and an analysis supporting the documentation if it differs from the conclusions used by the Chesapeake Bay Program.

7. An analysis and explanation of how and when the plan is expected to achieve the elements of subdivisions 1, 2 and 3 of this subsection.

8. A process for and schedule of adjustment of the plan if reevaluation concludes that the specific nutrient reduction goals will not be met.

9. An analysis of the cost effectiveness and equity of the recommended nutrient reduction alternatives.

10. An opportunity for public comment and a public education and information program that includes but is not limited to information on specific assignments of responsibility needed to execute the plan.

B. Tributary plans shall be developed by the following dates for the:

1. Potomac River Basin, January 1, 1997.

2. Rappahannock River Basin, January 1, 1998.

3. York River Basin, January 1, 1998/1999.

4. James River Basin, January 1, 1998/1999.

5. Eastern and western coastal basins, January 1, 1999.

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§ 2.1-51.12:2.1. Additional procedures and processes for plan development and implementation.

A. Before any local government is required to commence detailed design of nutrient control technology at a publicly owned treatment works, the Commonwealth shall enter into a written Nutrient Control Agreement with the local government. Nutrient Control Agreements shall: (i) contain appropriate, legally binding and enforceable commitments by the local government to design, construct, operate, and maintain the nutrient control technology to achieve the most efficient and cost-effective nutrient control possible; (ii) govern the installation and long-term operation and maintenance of nutrient control technology pursuant to the tributary plan required by this article; (iii) provide each local government with a state grant commitment covering no less than fifty percent of the local government's cost, or cost share, of designing, testing and installing the nutrient control technology; (iv) consider the financial capability of each local government as well as the impact on sewer rates as major factors in the development of nutrient control implementation schedules; and (v) authorize the Commonwealth to make state revolving fund loans from the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing nutrient controls, based upon financial need and subject to the availability of loan funds, priority ranking, and loan distribution criteria.

B. In providing for nutrient control at publicly owned treatment works needed to maintain the nutrient reduction goal of commitments made by the Commonwealth through the Chesapeake Bay Agreement, as amended, the Secretary shall first consider whether: (i) all publicly owned treatment works in the basin under consideration have either installed biological nutrient removal technology or achieved equivalent nutrient reduction by other means; (ii) nonpoint sources in the tributary have achieved total nutrient reductions comparable to total nutrient reductions achieved by point sources in the tributary; (iii) a scientific relationship has been established between the need for the additional nutrient controls and the attainment of water quality goals; (iv) commitments have been made to achieve additional nonpoint source nutrient reductions in the tributary comparable to the additional nutrient reductions required of the point sources; and (v) the additional nutrient reduction controls have been selected after an evaluation of their cost effectiveness, including nutrient trading.

C. In developing tributary plans, the Secretary shall consider whether: (i) all studies relevant to the need for nutrient reduction and the establishment, if necessary, of nutrient reduction goals have been completed; (ii) the relative contributions and impact of point and nonpoint sources of nutrients have been identified, and, to the extent the Secretary determines nutrient goals to be necessary, whether such goals have been established individually for point and for nonpoint sources of nutrients based on their relative impact; (iii) a scientific relationship has been established between the need for nutrient controls and the attainment of water quality goals; and (iv) estimates of costs for each publicly owned treatment works affected by point source nutrient reduction goals have been developed at the time the goals are established.

D. Nothing in this section shall be construed to prevent the Commonwealth from exercising its authority pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) to impose requirements in any discharge permit issued to a local government.

E. As used in this section the term "local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

CHAPTER 23.3.

VIRGINIA WATER QUALITY IMPROVEMENT FUND.

§ 62.1-241.13. Definitions.

As used in this chapter, unless the context requires otherwise:

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

§ 62.1-241.14. Virginia Water Quality Improvement Fund established; purposes.

There is hereby established the Virginia Water Quality Improvement Fund, hereafter referred to as the "Fund," to provide grants to local governments and other entities for the implementation of point and nonpoint source nutrient controls where such controls are needed to meet the nutrient reduction goals established pursuant to the Chesapeake Bay Agreement, as amended, and such other controls that are needed to improve the quality of state waters. The Fund shall be established out of sums appropriated to it from time to time by the General Assembly. The Fund and all income from the investment of moneys held in the Fund and any other sums designated for deposit in the Fund from any other source, public or private, shall be set apart as a permanent and perpetual fund.

The Fund shall be administered and managed by the Virginia Resources Authority, subject to the right of the Secretary of Natural Resources to direct the distribution of grants from the Fund. Implementation of nutrient controls identified in the tributary plans developed and implemented pursuant to Article 2 of Chapter 5.1 of Title 2.1 shall have grant funding priority and the terms and conditions in such grants shall be consistent with the tributary plans. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a

122 *reasonable fee to be approved by the Secretary of Natural Resources for the Authority's management*
123 *services.*

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