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HOUSE BILL NO. 2835

Offered January 20, 1997

A BILL to amend and reenact § 10.1-2109 of the Code of Virginia, relating to local penalty powers in Chesapeake Bay Preservation Areas.

Patrons—Drake, Guest, Howell, Morgan, Murphy and Reid

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2109 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-2109. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances.

A. Counties, cities and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city and town in Tidewater Virginia not later than twelve months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this chapter.

C. All counties, cities and towns in Tidewater Virginia shall have zoning ordinances which incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this chapter. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 10.1-2107.

D. Counties, cities and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this chapter. Counties, cities and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. Counties, cities and towns in Tidewater Virginia may provide for the following penalties in any of their zoning, subdivision or other ordinances enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas. The penalty provisions shall be in addition to any other penalties or enforcement mechanisms available to the local government.

1. Any person who: (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas; (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance; or (iii) violates or fails, neglects, or refuses to obey any court order related to such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city or town itself or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who: (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas; or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order to be issued against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1 of this subsection. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

INTRODUCED

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