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HOUSE BILL NO. 626**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 23, 1998)

(Patron Prior to Substitute—Delegate McDonnell)

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

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; impose civil penalties or civil charges.

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. In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state water in Chesapeake Bay Preservation Area, any county, city or town in Tidewater Virginia may incorporate the following penalties into its zoning, subdivision or other ordinances:

1. Any person who: (i) is in violation of any ordinance adopted by such city, county or town pursuant to this chapter or (ii) is in violation of any final rule, regulation, notice, order, permit, variance, or other approval promulgated or issued by the county, city or town and which is authorized under such ordinance, shall, upon such finding by an appropriate circuit court, be subject to a civil penalty. The civil penalty for any one violation shall be no greater than \$1,000 per day of violation, but in no event shall the total combined penalty for any series of violations arising from the same operative set of facts be greater than \$10,000. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid to the treasury of the county, city or town in which the violation or violations occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order; provided, however, 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 written consent and agreement of any person who is in violation of or who is alleged to be in violation of any ordinance adopted by such city, county or town pursuant to this chapter, or any final rule, regulation, notice, order, permit, variance, or other approval promulgated or issued by the county, city or town and which is authorized under such ordinance, the county, city or town may provide, in an order issued by county, city or town against such person, for the one-time payment of civil charges in specific sums for such violations or alleged violations. The civil charge for any one violation shall be no greater than \$1,000 per day of violation, but in no event shall the total combined civil charges for any series of violations arising from the same operative set of facts be greater than \$10,000. Civil charges shall be paid to the treasury of the county, city or town in which the violation or alleged violations occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein; provided, however, that where the violator or alleged 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 penalties 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 county, city or town.