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SENATE BILL NO. 922

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact §§ 3.2-3602, 3.2-3611, 10.1-104.2, 10.1-603.7, and 15.2-924.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-3607.1 and by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5, relating to fertilizer; regulation of application and labeling.

Patron—McDougle

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3602, 3.2-3611, 10.1-104.2, 10.1-603.7, and 15.2-924.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-3607.1 and by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5 as follows:

§ 3.2-3602. Local government regulation of fertilizer.

No locality shall regulate the registration, packaging, labeling, sale, use, application, or distribution of fertilizers. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

§ 3.2-3607.1. Phosphorus restrictions in lawn fertilizers; exemptions; consumer education.

A. As used in this section, unless the context requires a different meaning:

"Lawn fertilizer" means any fertilizer distributed for nonagricultural use on turf. Lawn fertilizer does not include lawn soils containing fertilizer or fertilizer products intended primarily for gardening, tree, shrub, and indoor plant application.

"Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

"Turf" means land that is planted as closely mowed, managed grass and includes golf courses, parks, cemeteries, publicly owned lands, and residential, commercial, or industrial property. Turf shall not include lands used in the operation of a commercial farm.

B. Effective January 1, 2017, and except as provided in subsection C, no person shall:

1. Apply to turf any lawn fertilizer that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate or

2. Apply lawn fertilizer to turf when the ground is frozen.

C. The prohibition against the use of lawn fertilizer under subsection B shall not apply to:

1. Newly established turf areas from sod or seed during their first growing season;

2. Turf areas being repaired or renovated;

3. Turf where soil tests performed within the past three years confirm the need for phosphorus fertilizer applications based upon nutrient management standards and criteria established by the Department of Conservation and Recreation, provided that the fertilizer application shall not contain an amount of phosphorus exceeding that necessary to correct the deficiency;

4. Golf courses that have implemented nutrient management plans pursuant to § 10.1-104.5;

5. Gardens including vegetable and flower, trees, and shrubs, and indoor applications including greenhouses; or

6. Manipulated manure, yard waste compost, or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

D. The Department, in consultation with representatives of the fertilizer industry, fertilizer retailers, and statewide turf and lawn care organizations, and other interested parties, may develop consumer information and recommended best practices for the application of lawn fertilizer.

§ 3.2-3611. Labeling.

A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall affix a label to the container or provide an invoice at the time of delivery for a bulk regulated product that states in clear, legible and conspicuous form, in the English language, the following information:

1. The quantity statement;

2. The grade under a given brand. The grade shall not be required when no primary nutrients are

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59 claimed;

60 3. The guaranteed analysis, which shall:

61 a. For fertilizers, conform to the following, with the percentage of each plant nutrient stated as
62 follows:

63 (1) Total Nitrogen (N) %

64 Available Phosphate (P205) %

65 Soluble Potash (K20) %

66 (2) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic
67 phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be
68 guaranteed;

69 (3) Guarantees for plant nutrients other than nitrogen (N), phosphate (P205), and potash (K20) shall
70 be expressed in the form of the element. A statement of the sources of nutrients including oxides, salt,
71 and chelates, may be required on the application for registration of specialty fertilizers, and may be
72 included as a parenthetical statement on the label. Degree of acidity or alkalinity (pH), beneficial
73 substances, or compounds determinable by laboratory methods also may be guaranteed by permission of
74 the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any
75 degree of acidity or alkalinity (pH), beneficial substances, or compounds are guaranteed, they shall be
76 subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;

77 b. For soil amendments, consist of a list of ingredients, and may include a statement of naturally
78 occurring nutrient levels;

79 c. For soil conditioners, including polyelectrolytes, contain the following information in the following
80 form:

81 (1) Name of active ingredient %

82 (name and list all)

83 (2) Total other ingredients %

84 d. For horticultural growing media, include a list of ingredients and other guarantees as required by
85 regulation;

86 e. When compost derived from sewage sludge, hazardous materials, unrendered animals or poultry or
87 their parts, or other source material specified in regulations established by the Board is used as an
88 ingredient, identify the source material of the compost; and

89 f. Include a list of such other ingredients as may be required by the Board through regulation.

90 4. The name and address of the registrant or licensee.

91 B. A commercial fertilizer that is formulated according to specifications provided by a consumer
92 prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show: (i) the quantity
93 statement; (ii) the guaranteed analysis; and (iii) the name and address of the distributor or the licensee.

94 C. For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the
95 registration document and customer sales invoice.

96 D. Effective January 1, 2017, lawn fertilizer shall be labeled as follows:

97 "DO NOT APPLY NEAR WATER, STORM DRAINS, OR DRAINAGE DITCHES. DO NOT APPLY IF
98 HEAVY RAIN IS EXPECTED. APPLY THIS PRODUCT ONLY TO YOUR LAWN/GARDEN, AND
99 SWEEP ANY PRODUCT THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET, BACK ONTO
100 YOUR LAWN/GARDEN."

101 § 10.1-104.2. Voluntary nutrient management training and certification program.

102 A. The Department shall operate a voluntary nutrient management training and certification program
103 to certify the competence of persons preparing nutrient management plans for the purpose of assisting
104 land owners and operators in the management of land application of fertilizers, municipal sewage
105 sludges, animal manures, and other nutrient sources for agronomic benefits and for the protection of the
106 Commonwealth's ground and surface waters.

107 B. The Department shall operate a voluntary nutrient management training program to enable
108 landowners and operators to prepare nutrient management plans for their own property.

109 C. The Department shall, with the approval of the Virginia Soil and Water Conservation Board,
110 promulgate regulations:

111 1. Specifying qualifications and standards for individuals to be deemed competent in nutrient
112 management plan preparation, and providing for the issuance of documentation of certification to such
113 individuals;

114 2. Specifying conditions under which a certificate issued to an individual may be suspended or
115 revoked;

116 3. Providing for criteria relating to the development of nutrient management plans for various
117 agricultural and urban agronomic practices;

118 4. Establishing fees to be paid by individuals enrolling in the training and certification programs;

119 5. Providing for the performance of other duties and the exercise of other powers by the Director as
120 may be necessary to provide for the training and certification of individuals preparing nutrient

management plans; and

6. Giving due consideration to relevant existing agricultural certification programs.

B.D. There is hereby established a special, nonreverting fund in the state treasury to be known as the Nutrient Management Training and Certification Fund. The fund shall consist of all fees collected by the Department pursuant to subsection A. No part of the fund, either principal or interest, shall revert to the general fund. The fund shall be administered by the Director, and shall be used solely for the payment of expenses of operating the nutrient management training and certification program.

§ 10.1-104.5. *Nutrient management plans required for golf courses.*

A. On or before July 1, 2017, all persons that own land operated as a golf course and upon which fertilizer, manure, sewage sludge or other compounds containing nitrogen or phosphorous are applied to support turf, plant growth, or other uses shall develop and implement nutrient management plans, planning standards, and specifications for such land pursuant to § 10.1-104.2 and regulations adopted thereunder. However, such lands shall be exempt from the application rate and timing provisions contained in any regulations developed pursuant to § 10.1-104.2, if research involving nutrient application rate and timing is conducted on such lands.

B. Nutrient management plans, planning standards, and specifications developed pursuant to this section shall be submitted to the Department. The Department shall approve or contingently approve such nutrient management plans, planning standards, and specifications within 30 days of submission. Such nutrient management plans, planning standards, and specifications shall be revised and resubmitted for approval to the Department at least once every five years thereafter or upon a major renovation or redesign of the golf course lands, whichever is sooner.

C. Golf courses shall maintain and properly implement such nutrient management plans, planning standards, and specifications on all areas where nutrients are applied.

D. The Department shall (i) provide technical assistance and training on the development and implementation of nutrient management plans, planning standards, and specifications, and (ii) establish, prior to July 1, 2015, a cost-share program specific to golf courses for implementation of this section.

E. Any information collected pursuant to this section shall be exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

§ 10.1-603.7. *Authorization for more stringent ordinances.*

A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, *subject to § 15.2-924.1 and provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are. Such ordinances shall be determined by the locality and approved by the Board* to be necessary to prevent any further degradation to water resources or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Any local stormwater management program in existence before January 1, 2005 that contains more stringent provisions than this article shall be exempt from the requirements of subsection A.

§ 15.2-924.1. *Regulation of nonpoint source pollution; fertilizer.*

A. No locality shall regulate the use, application, or storage of fertilizers, as defined in Chapter 36 (§ 3.2-3600 et seq.) of Title 3.2, except by ordinances consistent with the requirements of the Chesapeake Bay Preservation Act (~~§ 10.1-2100 et seq.~~), the Erosion and Sediment Control Law (~~§ 10.1-560 et seq.~~), § 3.2-3607.1, the Stormwater Management Act (§ 10.1-603.1 et seq.) or other nonpoint source regulations promulgated by the Department of Conservation and Recreation or the Soil and Water Conservation Board, or § 10.1-104.5.

B. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

C. Any person aggrieved by any development condition prohibiting or restricting the use, application, or storage of fertilizers imposed as a condition of approval of a land use application submitted shall have the right to contest any such development condition by filing an action pursuant to § 15.2-2285 or 15.2-2314, as the case may be, with the circuit court having jurisdiction of the land affected by the imposed development condition.