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SENATE JOINT RESOLUTION NO. 254

Offered January 14, 2015

Prefiled January 13, 2015

Urging the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to recognize the Commonwealth of Virginia's opposition to the proposed rule regarding the Clean Water Act definition of "waters of the United States."

Patron—Chafin

Referred to Committee on Rules

WHEREAS, the Clean Water Act (CWA) and its implementing regulations of the past four decades recognize the partnership between federal, state, and local governments to achieve the objectives of the Act; and

WHEREAS, Section 101(g) of the CWA expressly states that "the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act"; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers have proposed a rule regarding the CWA definition of "waters of the United States" that could significantly increase costs and regulatory requirements for state and local governments and, ultimately, costs for state and local residents and businesses; and

WHEREAS, the proposed rule has no prescribed limits to federal jurisdiction and impairs state authority; and

WHEREAS, the proposed rule will apply to all programs of the CWA and therefore subject more activities to CWA permitting requirements, National Environmental Policy Act analyses, mitigation requirements, and citizen lawsuits challenging local actions based on the applicability and interpretation of newfound authority; and

WHEREAS, the justification for the proposed rule rests on a scientific analysis that is still under review, and the proposing agencies decided to proceed with development of a proposed rule addressing issues associated with the connectivity of waters prior to being informed by the Science Advisory Board review of the implications of its findings; and

WHEREAS, the proposed rule does not provide an explanation of how the proposed expansion of CWA jurisdiction and transfer of ultimate authority might affect other CWA programs, state laws and responsibilities, water rights, land use, governance, and regulated parties; now, therefore, be it

RESOLVED, by the Senate, the House of Delegates concurring, That the Environmental Protection Agency and the U.S. Army Corps of Engineers be urged to recognize the Commonwealth of Virginia's opposition to the proposed rule regarding the Clean Water Act definition of "waters of the United States." As co-regulator of water resources, the Commonwealth of Virginia should be fully consulted and engaged in any process that may affect the management of its waters; and, be it

RESOLVED FURTHER, That the EPA and the Corps of Engineers defer adopting any redefinition of "waters of the United States" until (i) the Science Advisory Board concludes its review and the EPA and Corps of Engineers has the opportunity to consider the conclusions of the review; (ii) an economic analysis is completed that fully identifies effects of the proposal, and any revised proposal, on the economy and economic development, including the effect on efforts to streamline infrastructure permitting and siting under current executive orders, guidance, and regulations; and (iii) the redefinition provides clarity on definitions and federal jurisdiction consistent with previous Supreme Court rulings and affirms that there is a limit to federal jurisdiction under the Clean Water Act; and, be it

RESOLVED FINALLY, That the Clerk of the Senate transmit copies of this resolution to the Administrator of the Environmental Protection Agency, the Commanding General of the U.S. Army Corps of Engineers, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia in this matter.

INTRODUCED

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