

16102219D

SENATE BILL NO. 443

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact § 62.1-44.19:20 of the Code of Virginia, relating to nutrient credit certification; priority consideration.

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-44.19:20 of the Code of Virginia is amended and reenacted as follows:****§ 62.1-44.19:20. Nutrient credit certification.**

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.

B. Regulations adopted pursuant to this section shall:**1. Establish procedures for the certification and registration of credits, including:**

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures; and

g. Requiring public notification of a proposed nutrient credit-generating entity; and

h. Establishing an optional system for consideration of a priority application for a land conversion project. Upon receipt of such an application and a \$10,000 fee, the Department shall review the application before reviewing any other certification application that is not an earlier-filed priority application. The fee shall be deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29. The Department shall review and approve priority applications within 30 days of receipt of the application and fee. If the Department requests within seven days of such receipt additional information to complete the application, the 30-day period shall be extended one day for each day the applicant takes to respond. Associated requests for release of credits shall also be given priority. This subdivision shall be implemented prior to adoption of regulations.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve

INTRODUCED

SB443

59 the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed
60 Implementation Plan or approved TMDLs;

61 d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the
62 level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or
63 approved TMDLs applicable to that land use;

64 e. Baselines for other nonpoint source credit-generating practices, which shall be based on the
65 Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best
66 available scientific and technical information;

67 f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed
68 a credit-generating practice that involves land use conversion, which shall represent controls beyond
69 those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice
70 shall represent controls beyond those in place at the time of TMDL approval;

71 g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia
72 Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

73 h. Credit quantities, which shall be established using the best available scientific and technical
74 information at the time of certification;

75 3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or
76 perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term
77 of no less than 12 months;

78 4. Establish requirements to reasonably assure the generation of the credit depending on the nature of
79 the credit-generating activity and use, such as legal instruments for perpetual credits, operation and
80 maintenance requirements, and associated financial assurance requirements. Financial assurance
81 requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are
82 used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a
83 point source permitted under this article, its existing tax or rate authority;

84 5. Establish appropriate reporting requirements;

85 6. Provide for the ability of the Department to inspect or audit for compliance with the requirements
86 of such regulations;

87 7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any
88 requirement to comply with local water quality requirements;

89 8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the
90 Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently
91 retired at the time of certification pursuant to this section for the purposes of offsetting growth in
92 unregulated nutrient loads; and

93 9. Establish such other requirements as the Board deems necessary and appropriate.

94 C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated
95 from effective nutrient controls or removal practices, including activities associated with the types of
96 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and
97 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available
98 scientific and technical information and (ii) credits that are located in tributaries outside of the
99 Chesapeake Bay Watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal
100 rates for each practice identified in Appendix A of the Department's document "Trading Nutrient
101 Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed:
102 Guidance for Agricultural Landowners and Your Potential Trading Partners."

103 D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits
104 as follows:

105 1. The registry shall include all nonpoint source credits certified pursuant to this article and may
106 include point source nitrogen and point source phosphorus credits generated from point sources covered
107 by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified
108 pursuant to this section at the option of the owner. No other credits shall be valid for compliance
109 purposes.

110 2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such
111 credits from transferring the credits on such commercial terms as may be established by and between the
112 owner and the regulated or unregulated party acquiring the credits.

113 3. The Department shall establish procedures for the listing and tracking of credits on the registry,
114 including but not limited to (i) notification of the availability of new nutrient credits to the locality
115 where the credit-generating practice is implemented at least five business days prior to listing on the
116 registry to provide the locality an opportunity to acquire such credits at fair market value for compliance
117 purposes and (ii) notification that the listing of credits on the registry does not constitute a
118 representation by the Board or the owner that the credits will satisfy the specific regulatory requirements
119 applicable to the prospective user's intended use and that the prospective user is encouraged to contact
120 the Board for technical assistance to identify limitations, if any, applicable to the intended use.

121 4. The registry shall be publicly accessible without charge.
122 E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply
123 with the provisions of this section shall be subject to the enforcement and penalty provisions of §
124 62.1-44.19:22.
125 F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a
126 Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012,
127 shall be considered certified nutrient credits and shall not be subject to further certification requirements
128 or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject
129 to the other provisions of this article, including registration, inspection, reporting, and enforcement.

INTRODUCED

SB443