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## SENATE BILL NO. 443

Senate Amendments in [ ] — January 26, 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 Prior to Engrossment—Senator 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~~ deny, approve, or approve with conditions ] 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

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

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

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

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

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

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

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

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

85 5. Establish appropriate reporting requirements;

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

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

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

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

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

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

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

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

116 3. The Department shall establish procedures for the listing and tracking of credits on the registry,  
117 including but not limited to (i) notification of the availability of new nutrient credits to the locality  
118 where the credit-generating practice is implemented at least five business days prior to listing on the  
119 registry to provide the locality an opportunity to acquire such credits at fair market value for compliance  
120 purposes and (ii) notification that the listing of credits on the registry does not constitute a  
121 representation by the Board or the owner that the credits will satisfy the specific regulatory requirements

applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

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