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HOUSE BILL NO. 1329

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 29, 2020)

(Patron Prior to Substitute—Delegate Kory)

A BILL to amend and reenact § 62.1-44.15:74 of the Code of Virginia, relating to Chesapeake Bay; Resource Protection Areas; tree removal.

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:74 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.

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 12 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 article.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § 62.1-44.15:72.

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 article. 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. (Contingent expiration date) In addition to any other remedies ~~which~~ *that* may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia ~~may~~ *shall* incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation 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, except 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 consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the 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 penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

E. (Contingent effective date) In addition to any other remedies ~~which~~ *that* may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia ~~may~~ *shall* incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil

60 penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of
61 the county, city, or town in which the violation occurred for the purpose of abating environmental
62 damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may
63 direct by order, except that where the violator is the county, city, or town itself, or its agent, the court
64 shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the
65 Stormwater Local Assistance Fund established by § 62.1-44.15:29.1.

66 2. With the consent of any person who (i) violates any provision of any local ordinance related to
67 the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects,
68 or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance
69 or permit condition authorized under such ordinance, the local government may provide for the issuance
70 of an order against such person for the one-time payment of civil charges for each violation in specific
71 sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the
72 county, city, or town in which the violation occurred for the purpose of abating environmental damage
73 to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county,
74 city, or town itself, or its agent, the civil charges shall be paid into the state treasury and deposited by
75 the State Treasurer into the Stormwater Local Assistance Fund established by § 62.1-44.15:29.1. Civil
76 charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil
77 charges may be in addition to the cost of any restoration required or ordered by the local governmental
78 body or official.

79 F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal
80 period for any person aggrieved by a decision of a board that has been established by the locality to
81 hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved
82 party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.