

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 735

An Act to amend and reenact § 62.1-44.119:1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 3.8 of Title 62.1 sections numbered 62.1-44.119:2, 62.1-44.119:3, and 62.1-44.119:4, relating to Chesapeake Bay Watershed Implementation Plan; effective date.

[H 1485]

Approved March 27, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.119:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3.8 of Title 62.1 sections numbered 62.1-44.119:2, 62.1-44.119:3, and 62.1-44.119:4 as follows:

§ 62.1-44.119:1. Effective date.

A. The provisions of this chapter shall not become effective unless, on or after July 1, 2026 2028, the Secretary of Agriculture and Forestry and the Secretary of Natural and Historic Resources jointly determine that the Commonwealth's commitments in the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan have not been satisfied by a combination of (i) agricultural best management conservation practices, including the coverage of a sufficient portion of Chesapeake Bay cropland by nutrient management plans or the installation of a sufficient number of livestock stream exclusion practices, and (ii) other point or nonpoint source pollution reduction commitments.

B. In making the determination required in subsection A, the effective date of the provisions of this chapter shall be extended for a period of one calendar year for each calendar year that the Commonwealth has not fully funded the amount calculated pursuant to § 10.1-2128.1 for effective Soil and Water Conservation District technical assistance and implementation of agricultural best management practices pursuant to § 10.1-546.1 from July 1, 2023, through the end of the biennial period in which the Secretary of Agriculture and Forestry and the Secretary of Natural and Historic Resources have made the joint determination required in subsection A. Nothing in this subsection shall prohibit adding funding to the Virginia Natural Resources Commitment Fund as established in § 10.1-2128.1 in any year from July 1, 2023, to the year the joint determination is made pursuant to subsection A for distribution in another program year in order to achieve full funding.

C. In no case shall the effective date of the provisions of this chapter be extended beyond July 1, 2030, unless sufficient funding for effective Soil and Water Conservation District technical assistance and implementation of agricultural best management practices has not been provided pursuant to § 10.1-2128.1 in any calendar year.

§ 62.1-44.119:2. Agricultural commitments; work group.

The Secretary of Natural and Historic Resources and the Secretary of Agriculture and Forestry shall convene a stakeholder advisory group, hereinafter referred to as the Group, to review annual progress and make recommendations toward the implementation of the Commonwealth's agricultural commitments in the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan. The Group shall develop (i) a process to assist any operator of 50 or more acres of Chesapeake Bay cropland in developing a nutrient management plan that meets the requirements of the goals to be achieved by the target date and (ii) a plan for the stream exclusion program in the Chesapeake Bay watershed. Such plans and progress reports shall include the number of practices completed by river basin in the prior program year and practices needed to complete the agriculture sector nutrient load reductions, including sediment reductions by river basin, identification of priority regions, the number of operators affected within each region, initiatives to enhance progress, an accounting of funding received toward the agricultural commitments, shortfalls remaining, and the consequences of such funding shortfalls. Such progress reports shall also include specific percentages relating to nutrient management plan and stream exclusion adoption compared to the requirements of the Phase III Watershed Implementation Plan.

§ 62.1-44.119:3. Virginia Natural Resources Commitment Fund reporting requirements.

Each soil and water conservation district shall report to the Department of Conservation and Recreation recommendations for improving the disbursement of funding and for program efficiencies that would expedite disbursement of funds provided through the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1.

§ 62.1-44.119:4. Regulatory format on agricultural practices before effective date.

Notwithstanding the provisions of this chapter, no regulatory action pursuant to §§ 62.1-44.121 and 62.1-44.123 shall be imposed on agricultural practices prior to July 1, 2028, provided that reasonable progress is being achieved and a detailed plan to include full funding, as provided under subsection C

of § 10.1-2128.1, for reaching the needed number of voluntary incentivized practices has been developed.

2. That the stakeholder advisory group (the Group) created by the Secretary of Agriculture and Forestry and the Secretary of Natural and Historic Resources pursuant to § 62.1-44.119:2 of the Code of Virginia, as created by this act, shall make recommendations to the Governor and the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources to ensure that all of the Commonwealth's agricultural sector commitments are achieved in accordance with the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan. The Group shall develop a year-to-year timeline for achieving specific metrics for the achievement of the Commonwealth's agricultural sector commitments, including the coverage of a sufficient portion of Chesapeake Bay cropland by nutrient management plans or the installation of a sufficient number of livestock stream exclusion practices, in the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan. Such timeline shall include specific annual percentages for nutrient management plan and stream exclusion adoption to meet the requirements of the Phase III Watershed Implementation Plan. The year-to-year timeline for achieving specific metrics shall be used to determine reasonable progress per § 62.1-44.119:4 of the Code of Virginia, as created by this act. The Group shall include representatives from the Department of Conservation and Recreation, soil and water conservation districts, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Shenandoah Riverkeepers, the Chesapeake Bay Commission, the Chesapeake Bay Foundation, the James River Association, the Virginia Cooperative Extension, the Virginia Cattlemen's Association, the Virginia Association of the Commissioners of the Revenue, and the Virginia Association of Counties. The Group shall also include two legislative members, one each from the Senate and the House of Delegates appointed by the Senate Committee on Rules and the Speaker of the House of Delegates, respectively. Such legislative members shall be members of the Virginia delegation of the Chesapeake Bay Commission. A preliminary report from the Group shall be due on December 1, 2023. The first annual report for the Group shall be due on July 1, 2024, and include the timeline with specific metrics. Thereafter, the progress report shall be due on an annual schedule to be determined by the Group.

3. That the Secretary of Agriculture and Forestry and the Secretary of Natural and Historic Resources shall, no later than August 1, 2025, jointly review the July 1, 2025, report of the Group established by the second enactment of this act as well as other relevant information at their disposal and together determine in their judgment whether work accomplished to date as well as planning and resource allocation are sufficient to substantially reach the allocated goals by July 1, 2028, and whether additional initiatives or resources or both will be necessary to continue an incentive-based effort.

4. That the determination made pursuant to subsection A of § 62.1-44.119:1 of the Code of Virginia, as amended by this act, shall consider that municipal wastewater point source reduction should be consistent only with the applicable point source plan for Watershed Implementation Plan Phase III as adopted pursuant to § 62.1-44.19:14 of the Code of Virginia.