

2012 VA General Assembly

Legislation Concerning Environmental Issues

Several pieces of legislation dealing with environmental concerns are presently being considered in the Virginia General Assembly. The following is a brief summary of the major issues of interest to environmental professionals. This publication reflects the status of these bills as of February 17th.

HB 40 Coastal primary sand dunes; standards for use, exemption.

Summary as introduced: Authorizes the Virginia Beach Wetlands Board to determine which structures or properties are in imminent danger from erosion or storm damage. If such structures or properties are found to be in imminent danger, the property owners will be able to erect or maintain protective bulkheads of a type, size and configuration approved by the Board. This is the same exemption from the Coastal Primary Sand Dunes and Beaches Act that applies to homes located in the Sandbridge Beach Subdivision.

Status: 02/16/12 House: Passed. Senate: Continued in Committee on Agriculture, Conservation and Natural Resources to 2013..

HB 67 Non-navigable state waters; regulation exclusively by Commonwealth.

Summary as introduced: Asserts that isolated bodies of water that are not fed by or replenished perennial streams are to be considered non-navigable waterways and, as such, are not subject to regulation by the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency under the federal Clean Water Act.

Status: 02/14/12 House: Left in Committee on Agriculture, Chesapeake and Natural Resources

HB 80 Real property tax; assessment of wetlands.

Summary as introduced: Requires the local assessing official to separately assess the fair market value of wetlands on real property, if requested by the property owner.

Status: 02/03/12 House: Passed. Senate: Referred to Committee on Finance

HB 176 Nutrient credit certification; regulations.

Summary as introduced: Directs the Virginia Soil and Water Conservation Board to adopt regulations governing the certification of certain nutrient credits. Referring to the Chesapeake Bay Total Maximum Daily Load (TMDL), the legislation sets out certain requirements of the regulations, permits the Department of Conservation and Recreation to establish an online registry of certified credits, and allows municipal separate storm sewer systems to acquire and use credits under certain conditions.

Status: 02/14/12 House: Passed. Senate: Referred to Committee on Agriculture, Conservation and Natural Resources

HB 186 Sewage sludge; authorizes a locality to prohibit land application of.

Summary as introduced: Authorizes a locality, by ordinance, to prohibit the land application of sewage sludge within its boundaries; makes clarifying amendments.

Status: 02/01/12 House: Continued to 2013 in Committee on Agriculture, Chesapeake and Natural Resources by voice vote

HB 239 Forestry, Department of; use of methyl bromide gas fumigation

Summary as introduced: Directs the Department of Forestry's forest tree nurseries to continue to use methyl bromide gas fumigation in their pre-seeding land preparation under the U.S. Environmental Protection Agency's listed usage exemption QPS (Quarantine & Pre-Shipment). The bill also authorizes the Department of Agriculture and Consumer Services to issue a phytosanitary certificate or a permit verifying that shipments of conifers and hardwood seedlings are free of pests and diseases.

Status: 02/14/12 House: Passed. Senate: Referred to Committee on Agriculture, Conservation and Natural Resources

HB 302 Environmental laboratory certification program; exempts certain laboratories.

Summary as introduced: Exempts laboratories from the Division of Consolidated Laboratory Services' environmental certification program when the laboratories are using the protocols established by the Department of Conservation and Recreation's voluntary nutrient management training and certification program in determining soil fertility, animal manure nutrient content, or plant tissue nutrient uptake.

Status: 01/30/12 House: Passed. Senate: Referred to Committee on General Laws and Technology

HB 336 Virginia Land Conservation Fund; distribution of revenues.

Summary as introduced: Provides that in distributing the revenues in the Virginia Land Conservation Fund generated by the sale of land conservation tax credits, funds shall not be distributed to federal governmental entities.

Status: 01/27/12 House: Passed. Senate: Referred to Committee on Finance

HB 371 Agricultural and forestal districts; adds James City County to list authorized to create.

Summary as introduced: Adds James City County to the list of counties authorized to create agricultural and forestal districts of local significance.

Status: 02/02/12 House: Passed. Senate: Referred to Committee on Local Government

HB 456 Riparian forest tax credit; refund.

Summary as introduced: Makes the existing tax credit for riparian forest buffer protection for waterways refundable. Currently, the tax credit may be carried forward for five taxable years, but is not refundable.

Status: 02/03/12 House: Continues to 2013 in Finance by voice vote.

HB 618 Soil and water conservation boards, local; appointment of members of board of directors.

Summary as introduced: Authorizes the governing body of a county or city in a soil and water conservation district to enact an ordinance requiring that the locality's representatives on the district board be appointed by the governing body rather than elected by the registered voters, as is currently required.

Status: 02/14/12 House: Left in Committee on Agriculture, Chesapeake and Natural Resources.

HB 799 Wetlands & streams; water protection permits, conditions for contribution to Board-approved fund.

Summary as introduced: Requires as a condition for contribution to a State Water Control Board-approved fund, in lieu of creating or restoring compensatory wetland or stream acreage, either a showing that sufficient compensatory mitigation bank credits are unavailable or that the Board has determined that unique circumstances exist.

Status: 02/08/12 House: Continued to 2013 in Committee on Agriculture, Chesapeake and Natural Resources

HB 932 Nutrient management; funds for Voluntary Nutrient Management Plan Program.

Summary as passed House: Provides that the Department of Conservation and Recreation operate a voluntary nutrient management program to assist owners and operators of agricultural land and turf to effectively manage and apply nutrients to their land. In developing the program, the Department is to begin testing the software for assisting owners and operators of agricultural lands and turf by July 1, 2013, and begin full implementation by July 1, 2014. The development of the software may be deferred until funds become available.

02/14/12 House: Passed.

HB 1009 Land-disturbing activities; service of order for violation.

Summary as passed House: Specifies the means of serving an order for land disturbance where no plan has been approved or permit obtained, other than where an agricultural exemption applies. Current law refers only to an order for a failure to comply with a plan or permit.

Status: 02/16/12 House: Passed. Senate: Reported from Committee on Agriculture, Conservation, and Natural Resources.

HB 1034 Interstate agreements and commissions, certain; withdrawal of State.

Summary as introduced: Withdraws the Commonwealth from the Southern Growth Policies Agreement, the Education Commission of the States, and the Interstate Commission on the Potomac River Basin. The bill has a delayed effective date of July 1, 2013.

Status: 02/14/12 House: Passed. Senate: Referred to Committee on Rules.

HB 1065 Erosion & Sediment Control Stormwater, & Chesapeake Bay Preservation Acts; integration of programs.

Summary as introduced: Integrates elements of the Erosion and Sediment Control Act, the Stormwater Act, and Chesapeake Bay Preservation Act so that these regulatory programs can be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The bill also eliminates the Chesapeake Bay Local Assistance Board and places its responsibilities with the Virginia Soil and Water Conservation Board

Status: 02/16/12 House: Passed. Senate: Reported from Committee on Agriculture, Conservation and Natural Resources.

HB 1076 Special use permit; land filling activities.

Summary as introduced: Provides that a locality may require a special use permit for certain land filling activities on agriculturally zoned property.

Status: 02/14/12 House: Passed.

HB 1218 Stream mitigation banks.

Summary as introduced: Combines the Tennessee River Basin and the Big Sandy River Basin into one river watershed for the purpose of establishing and operating a stream mitigation bank within the watershed.

Status: 02/14/12 House: Passed. Senate: Referred to Committee on Agriculture, Chesapeake and Natural Resources.

HB 1268 Land preservation tax credit; reduces amount that may be claimed for taxable years 2012 & 2013.

Summary as introduced: Reduces from \$100,000 to \$50,000 the amount of the land preservation tax credit that may be claimed for taxable years 2012 and 2013. Any taxpayer affected by the credit reduction would be allowed two additional taxable years in which to claim the land preservation tax credit.

Status: 02/10/12 House: Continued to 2013 in Committee on Finance by voice vote.

HB 1281 Wetland and dredge and fill programs, federal; authorizes State Water Control Board to regulate.

Summary as introduced: Authorizes the State Water Control Board to assume full responsibility for regulating wetlands and dredge and fill programs that are currently also under the authority of the U.S. Army Corps of Engineers. The bill will would eliminate dual permitting requirements. The U.S. Environmental Protection Agency would have to determine whether Virginia has the authority to administer the individual and general permit program under § 404 of the Clean Water Act.

Status: 02/14/12 House: Left in Committee on Agriculture, Chesapeake and Natural Resources.

HJ 129 TMDL; Attorney General to explore challenge to constitutionality of regulations by USEPA.

Summary as introduced: Requests the Attorney General of Virginia to explore a challenge to the constitutionality of certain Total Maximum Daily Load (TMDL) regulations adopted by the U.S. Environmental Protection Agency regarding the Chesapeake Bay. The resolution asserts that the TMDL regulations, which are binding upon Virginia localities releasing storm waters and treated waste waters into tributaries of the Bay, essentially constitute an unfunded mandate in violation of the 10th Amendment to the United States Constitution.

Status: 02/14/12 House: Left in Committee on Agriculture, Chesapeake and Natural Resources

HJ 243 Wetlands; DEQ to study benefits and costs of seeking authority from USEPA to administer program.

Summary as introduced: Requests the Department of Environmental Quality to study the benefits and costs of seeking authority from the U.S. Environmental Protection Agency to administer the § 404 permitting program under the federal Clean Water Act.

Status: 02/13/12 House: Passed. Senate: Referred to Committee on Rules.

SB 52 Environmental laboratory certification program; exempts certain laboratories.

Summary as introduced: Exempts laboratories from the application of the environmental laboratory certification program when testing to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake.

Status: 01/26/12 Senate: Passed. House: Passed.

SB 77 Nutrient credit certification; regulations.

Summary as passed Senate: Directs the Virginia Soil and Water Conservation Board to adopt regulations governing the certification of certain nutrient credits. Referring to Chesapeake Bay Total Maximum Daily Loads (TMDLs), the legislation sets out certain requirements of the regulations, directs the Department of Conservation and Recreation to establish an online registry of certified credits, and provides for enforcement and appeals. The bill provides that an operator of a credit-generating facility found to be in violation of the Nutrient Trading Act or any attendant regulations shall be subject to a civil penalty not exceeding \$10,000.

Status: 02/13/12 Senate: Passed with substitute. House: Referred to Committee on Agriculture, Chesapeake, and Natural Resources.

SB 123 Environmental covenants; compliance with Uniform Environmental Covenants Act not required.

Summary as passed Senate: Limits the use of covenants under the Uniform Environmental Covenants Act to those situations in which all parties agree to use such a covenant.

Status: 02/13/12 Senate: Passed. House: Referred to Committee on Agriculture, Chesapeake and Natural Resources.

SB 160 Cost-Effective Public Buildings Act; created.

Summary as introduced: Requires executive branch agencies and institutions entering the design phase for construction of a new building greater than 5,000 gross square feet in size, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, conform to Virginia Energy Conservation and Environmental Standards developed by the Department of General Services considering the U.S. Green Building Council (LEED) green building rating standard, the Green Building Initiative "Green Globes" building standard, and other appropriate requirements. Exemptions from the requirement may be granted by the Director of the Department of General Services upon a finding of special circumstances that make construction or renovation to the standards impracticable.

Status: 02/16/12 Senate: Passed. House: Committee on substitute printed 12105457D-HI

SB 402 Nutrient Offset Fund; priority for funding for certain facilities.

Summary as introduced: Establishes as a priority for funding from the Nutrient Offset Fund those nutrient offsets that are produced from facilities that generate electrical or heat energy, steam, or hot water using animal waste as a fuel source. The initial priority for funding will be the oxygen-starved gasification of up to 75,000 tons of animal waste per year that has been generated on poultry or dairy farms in Augusta, Page, Rockingham, and Shenandoah Counties. The nutrient offsets purchased with moneys from the Fund will be available for sale to owners or operators of new or expanded facilities required to offset nutrient loads through the watershed general permit. The bill requires the Department of Environmental Quality and the Department of Conservation and Recreation to conduct a 12-month assessment of the success of the operation of the first gasification facility to receive initial priority.

Status: 02/02/12 Senate: Continued to 2013 in Committee on Agriculture, Conservation and Natural Resources

SB 404 Riparian forest tax credit; refund.

Summary as introduced: Makes the existing tax credit for riparian forest buffer protection for waterways refundable. Currently, the tax credit may be carried forward for five taxable years, but is not refundable.

Status: 02/13/12 Senate: Stricken from Senate calendar.

SB 410 Wetlands & streams; water protection permits, conditions for contribution to Board-approved fund.

Summary as introduced: Requires as a condition for contribution to a State Water Control Board-approved fund, in lieu of creating or restoring compensatory wetland or stream acreage, either a showing that sufficient compensatory mitigation bank credits are unavailable or that the Board has determined that unique circumstances exist.

Status: 02/02/12 Senate: Continued to 2012 in Committee on Agriculture, Conservation and Natural Resources.

SB 425 Interbasin transfer of water resources; State Water Control Board to establish policies, etc.

Summary as introduced: Charges the State Water Control Board with the responsibility to establish policies and requirements for obtaining a Virginia Water Protection Permit for the interbasin transfer of water resources. The bill requires the applicant for a permit to provide certain information, including an analysis of alternatives to the transfer and a comprehensive analysis of the impacts that would occur in the source and receiving basins.

Status: 02/16/12 Senate: Passed. House: Referred to Committee on Agriculture, Chesapeake and Natural Resources

SB 504 Air quality, water quality or solid waste permits; facilities upgrade.

Summary as introduced: Allows operators of facilities that hold air quality, solid waste, or water quality permits to install new technology, equipment, or other apparatus at the permitted facility without having to obtain a new, modified, or amended permit so long as they can demonstrate that the new technology will result in increased energy efficiency and improved environmental conditions.

Status: 02/13/12 Senate: Passed with substitute. House: Referred to Committee on Agriculture, Chesapeake and Natural Resources.

SB 509 State Water Control Board; powers and duties.

Summary as introduced: Requires that state water quality laws be no more restrictive than federal requirements. Currently, Virginia law allows more stringent regulations than those adopted by the federal government, so long as the reasons for the more restrictive provisions are disclosed to the committees having oversight responsibilities.

Status: 01/26/12 Senate: Stricken at request of Patron in Committee on Agriculture, Conservation and Natural Resources

SB 676 Recycling survey; requires solid waste planning units and localities to submit report every 4 years

Summary as introduced: Requires solid waste planning units and localities to submit a recycling survey report every four years. Currently, the Department of Environmental Quality requires this report to be submitted annually.

Status: 02/13/12 Senate: Passed with amendments. House: Referred to Committee on Agriculture, Chesapeake and Natural Resources.