



CHESAPEAKE BAY COMMISSION

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2017 General Assembly Session Virginia, Maryland and Pennsylvania

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VIRGINIA

Resolutions

HJ 813 and SJ 336 Delegate Lingamfelter and Senator Hanger: Commending the Chesapeake Bay Foundation on its 50th anniversary.

Agriculture

HB 1472 and SB 965 Delegate Lingamfelter, Delegate Landes, Senator Hanger, and Senator Lewis: Provides an exception to the prohibition against contracts between employing agencies and their officers or employees for contracts by an officer or employee of a soil and water conservation district to participate in a cost-share program for the installation of best management practices to improve water quality. The exception does not apply to subcontracts or other agreements entered into to provide services for implementation of a cost-share contract established under such program. The Act provides that the exception applies to all contracts entered into on and after July 1, 2017, and to any contract entered into by an officer or employee or an immediate family member of such officer or employee with a soil and water conservation district to participate in a cost-share program for the installation of best management practices to improve water quality prior to the effective date of this act.

SB 1394 Senators Wagner, Edwards, and McPike: Establishes the parameters of a program under which small agricultural generators may sell the electricity generated from a small agricultural generating facility to its utility.

Wasteload Allocations and Nutrient Trading

HB 1619 Delegates Bulova, Lingamfelter, Herring, and Kory: Directs the State Water Control Board to conduct a review every 10 years beginning in 2020 of wasteload allocations to determine whether changes in the use of a facility have halted or reduced nutrient discharges and determine the need for reallocations based on a variety of factors, including changes in treatment technologies and land use. Such decennial reviews shall propose reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocation for future use.

HB 2311 Delegate Cox: Requires the Director of the Department of Environmental Quality to use certain funds to purchase nutrient credits or allocations from point or nonpoint sources that achieve reductions beyond the requirements of state or federal law or the Chesapeake Bay Watershed Implementation Plan.

The Act directs DEQ to establish procedures for distributing moneys from the Nutrient Offset Fund with certain requirements. The Act requires the Director to consider the recommendations of the Secretary of Commerce and Trade and the requirements of the State Water Control Law (§ 62.1-44.2 et seq.) in the sale of nutrient credits to new or expanding private facilities. The Act also removes the priority given to nutrient offsets produced from facilities that generate electricity from animal waste and requires that credits in the Nutrient Offset Fund be listed in a registry maintained by DEQ.

Water Quality

HB 2046 Delegate Murphy and Delegate Watts: Requires the Board of Pharmacy to develop guidelines for the provision of counseling and information regarding proper disposal of unused dispensed drugs, including information about pharmacy drug disposal programs in which the pharmacy may participate, by pharmacists to patients for whom a prescription is dispensed.

HB 2383 and SB 898 Delegates Lingamfelter, Farrell, Herring, LeMunyon, Levine, Ransone, Kory, and Krizek and Senators Stuart and Surovell: Directs the Department of Environmental Quality to identify the owner or operator of any combined sewer overflow outfall that discharges into the Chesapeake Bay Watershed and to determine by July 1, 2018 what actions by the owner or operator are necessary to bring the outfall into compliance with Virginia law, the federal Clean Water Act, and the Presumption Approach described in the CSO Control Policy of the U.S. Environmental Protection Agency. The legislation requires that any owner or operator of such an outfall shall initiate construction by July 1, 2023, shall bring the CSO outfall into compliance with the EPA policy by July 1, 2025, and shall annually report its progress to DEQ. The legislation requires DEQ to provide such reports to certain legislative committees, the Virginia delegation to the Chesapeake Bay Commission, the Secretary of Natural Resources, and the Governor. The legislation does not apply to any owner or operator under a state order or decree related to the CSO as of January 1, 2017.

SB 1398 Senator Surovell and Senator Chase: Requires the owner or operator of a coal combustion residuals unit (CCR unit) to identify water pollution and address corrective measures to resolve it, evaluate the clean closure of the CCR unit by recycling the ash for use in cement or moving it to a landfill, and demonstrate the long-term safety of the CCR unit. The legislation requires the owner or operator of each CCR unit to transmit its assessment to the Department of Environmental Quality (DEQ) and other agencies or legislative committees by December 1, 2017. The legislation requires DEQ to suspend, delay, or defer the issuance of any permit to provide for the closure of any CCR unit until May 1, 2018, or the effective date of any legislation adopted during the 2018 Regular Session of the General Assembly that addresses the closure of a CCR unit in Virginia, whichever occurs later. In deciding whether to issue any such permit, the Director of DEQ need not include or rely upon his review of any such assessment.

Stormwater

HB 1597 Delegate Webert: Requires any locality establishing a stormwater management utility to provide a full or partial waiver of charges for a person whose approved stormwater management plan indicates that the stormwater produced by his property is retained and treated on site.

HB 1774 Delegate Hodges: Directs the Commonwealth Center for Recurrent Flooding Resiliency (the Center) to convene a work group to consider alternative methods of stormwater management in rural

Tidewater localities. The Act provides that the group is to be facilitated by the Virginia Coastal Policy Center at William and Mary Law School and is to include representatives of institutions of higher education, state agencies, local governments, private industry, and other groups, including the Chesapeake Bay Commission. The Act provides that the work group is to review and consider the creation of rural development growth areas, the development of a volume credit program, the payment of fees to support regional best management practices, and the allowance of the use of stormwater in highway ditches to generate volume credits. The Act requires the Center to report the results of the work group's examination 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 by January 1, 2018, which is the date the work group provisions of the bill are set to expire. The Act also delays from July 1, 2017, to July 1, 2018, the effective date of new stormwater laws enacted during the 2016 Session of the General Assembly.

HB 2009 Delegate Hodges: Authorizes the hiring of certified third-party professionals to administer any or all aspects of a program for the management of stormwater and erosion, including plan review and inspection but not including enforcement, on behalf of (i) an erosion and stormwater management program authority, which is the State Water Control Board or a locality approved by the State Water Control Board, or (ii) a stormwater management program authority, which can be a locality, a state entity, or another type of entity.

Land Conservation

SB 963 Senator Hanger: Extends to taxable year 2017 the \$20,000 limit on the amount that a taxpayer may claim per year under the land preservation tax credit. The Act retains the \$50,000 limit for each subsequent taxable year.

Fisheries and Habitat

HB 1573 Delegate Helsel and Delegate Bloxom: Provides that when the Virginia Marine Resources Commission (VMRC) revokes fishing privileges for a violation of the tidal fisheries law, it shall only revoke the particular type of license that is applicable to the fishery in which the violation occurred. VMRC may revoke other licenses upon a second or subsequent violation within five years. The Act requires the Commission to take into consideration certain factors when determining whether to revoke tidal fishing privileges for up to five years.

HB 1574 Delegate Helsel and Delegate Bloxom: Provides that when a person charged with violating an oyster culling regulation is required to scatter the entire cargo of oysters on the public rocks, no portion of the cargo shall be scattered anywhere else.

HB 1796 and SB 1143 Delegate Stolle, Delegate Knight and Senator DeSteph: Provides that certain oyster ground leaseholders in the Lynnhaven River are subject to the conduct of approved municipal dredging projects to restore existing navigation channels. The Act limits such municipal dredging projects to oyster grounds that are condemned, restricted, or otherwise nonproductive, and it requires the locality to compensate the lessee for the use of the ground. The Act directs that if the parties cannot agree on a compensation amount, a court of competent jurisdiction shall determine the value of the ground.

HB 2297 and SB 1144 Delegate Miyares, Delegate Knight, and Senator DeSteph: Requires VMRC to post notice of an application to lease oyster planting grounds for 30 days on its website and to notify by mail any current holders of adjoining leases and riparian owners within 200 feet of the selected grounds. The Act (i) reduces from four weeks to two weeks the period during which the Commission is required to publish weekly notice of the application in a newspaper and (ii) requires all forms of notice to invite written comments. The Act also provides that the lease applicant shall bear the cost of notice.

SB 906 Senator Surovell, Senator McPike, and Delegate Kory: Prohibits the introduction of snakehead fish from any location into state waters.

SB 909 Senator Stuart: Raises the annual total of allowable landings for menhaden from 158,700.12 metric tons to 168,937.75 metric tons.

SB 1203 Senator Lewis: Authorizes localities, by ordinance, to establish a working waterfront development area and grant certain incentives and regulatory flexibility to private entities for the development of working waterfronts in such area.

Virginia Budget Amendments for FY 2018

Approximately \$18 million for the Agriculture BMP Cost Share Program, including funding for technical assistance provided by local SWCDs.

\$1.35 million for purchase by the Hampton Roads Sanitation District (HRSD) of an extensometer to measure land subsidence. Funding is in support of the HRSD “Sustainable Water Initiative for Tomorrow” (SWIFT) project.

\$4.5 million for the Virginia Land Conservation Fund.

\$1 million for the Virginia Battlefield Preservation Fund.

Elimination of funding for the Virginia Office of Environmental Education.

Restoration of funding to the Virginia Marine Resources Commission for oyster ground lease surveying and for the Virginia Saltwater Fishing Tournament.

\$226,000 for the Tangier Island seawall project.

Budget study language regarding stabilized funding for agriculture BMPs: *The Department of Conservation and Recreation shall convene a stakeholder group to include, at a minimum: two members of the House of Delegates and one member of the Senate from the membership of the Chesapeake Bay Commission who will be selected by the Joint Rules Committee, representatives of the Virginia Farm Bureau Foundation, the Virginia Association of Soil and Water Conservation Districts, the Virginia Agribusiness Council, and the Chesapeake Bay Foundation, the Director, Department of Conservation and Recreation or his designee, the Secretary of Natural Resources or her designee, and staff from the House Appropriations and Senate Finance Committees to evaluate methods to stabilize the fluctuations in funding for Agricultural Best Management Practices (BMPs).*

Budget study language regarding RMP incentives: *The Director of the Department of Conservation and Recreation shall convene a stakeholder group consisting of, but not limited to, designees of the Secretary of Natural Resources, the Secretary of Agriculture and Forestry, the Department of Agriculture and Consumer Services, the Virginia Association of Soil and Water Conservation Districts, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Chesapeake Bay Commission, and the Chesapeake Bay Foundation to examine the funding, training, and resource needs, as well as explore new incentives, for additional implementation of Resource Management Plans (RMPs).*

MARYLAND

Joint Resolutions

SJ 8 -- Chesapeake Bay Restoration - Federal Budget Blueprint Funding Reductions - Rescission Request. This joint resolution (1) expresses the General Assembly's opposition to proposed federal budget cuts to the Chesapeake Bay Program and other federal programs that support the restoration of the Chesapeake Bay and (2) urges the Governor to publicly oppose the proposed budget cuts. The Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee must monitor and make recommendations regarding federal budget proposals and actions affecting the Chesapeake Bay and its tributaries.

Bay Restoration Fund

HB 384/SB 343 - Bay Restoration Fund - Eligible Costs – Expansion. This bill expands the authorized uses of the Bay Restoration Fund (BRF) by altering the definition of “eligible costs.” Currently, only costs related to upgrading a facility from biological nutrient removal (BNR) to enhanced nutrient removal (ENR) are eligible for BRF funding; costs related to BNR upgrades are not. By changing the definition of eligible costs, the Maryland Department of the Environment (MDE) is authorized to use BRF for BNR upgrades.

HB 417/SB 314 - Clean Water Commerce Act of 2017. This Administration bill expands the authorized uses of the Bay Restoration Fund's (BRF) Wastewater Account to include (after funding other specified BRF priorities) the purchase of cost-effective nitrogen, phosphorus, or sediment load reductions in support of the State's efforts to restore the health of the Chesapeake Bay; the bill authorizes up to \$4 million in fiscal 2018, \$6 million in fiscal 2019, and \$10 million per year in fiscal 2020 and 2021 from BRF for that purpose. The nitrogen, phosphorus, and sediment load reductions cannot be from the agricultural sector and must be created on or after July 1, 2017. The Maryland Department of the Environment (MDE) must adopt specified implementing regulations in consultation with the secretaries of Agriculture, Commerce, Natural Resources, Planning, and Transportation, and with public- and private-sector stakeholders. The bill establishes reporting requirements for MDE. The bill takes effect July 1, 2017 and terminates June 30, 2021.

SB 1190 - Bay Restoration Fund - Upgraded Wastewater Facilities - Grants to Counties and Municipalities. This bill authorizes the Maryland Department of the Environment (MDE) to use funds from the Bay Restoration Fund (BRF) to award a grant to a county or municipality that upgraded a wastewater facility to enhanced nutrient removal (ENR) before July 1, 2013, if (1) the county or municipality did not receive a grant for the upgrade from BRF and (2) the customers of the wastewater

facility pay the bay restoration fee. Up to \$2 million in grants may be awarded by MDE on a first-come, first-served basis. The bill terminates September 30, 2019.

Nonwoven Wipes

HB1239/SB 280 - Environment - Nonwoven Disposable Products - Advertising and Labeling (Sponsors Del. Frush and Gutierrez/Sen. Guzzone). This bill prohibits, beginning January 1, 2018, a manufacturer of a nonwoven disposable product from advertising or labeling the product as (1) safe to flush; (2) safe for disposal in sewerage systems; or (3) safe for disposal in on-site sewage disposal (septic) systems unless the nonwoven disposable product meets the bill's definition of "flushable." Also beginning January 1, 2018, a manufacturer of a nonwoven disposable product that is not flushable must clearly and conspicuously label such a product in a manner that alerts the purchaser that the product should not be flushed. (*Referred to Interim Study*).

Oysters

HB 924 - Natural Resources - Oyster Management - Prohibited Actions. This bill prohibits the Department of Natural Resources (DNR) from taking any action to reduce or alter the boundaries of the oyster sanctuaries established in "Oyster Sanctuaries of the Chesapeake Bay and its Tidal Tributaries (September 2010)" until the department has developed a fisheries management plan for the scientific management of the oyster stock following the completion of its reports required under Chapter 703 of 2016 (for which the final report is due by December 1, 2018). The bill's prohibition may not be construed to prevent DNR from (1) selecting the final two tributaries for tributary-scale oyster restoration sanctuary projects in accordance with the 2014 Chesapeake Bay Agreement or (2) establishing, in DNR's discretion, any dimensions for a tributary-scale oyster restoration sanctuary project. The bill takes effect June 1, 2017.

Sewage Disposal

HB 1045- On-Site Sewage Disposal Systems - Membrane Bioreactor (MBR) Technology – Regulations. This bill requires the Maryland Department of the Environment (MDE), by January 1, 2019, to propose regulations that encourage the use of permeable micro- or ultra-filtration membrane bioreactor (MBR) or other treatment technologies in on-site sewage disposal systems (OSDS) for nonresidential uses that (1) meet MDE's guidelines for use of class IV reclaimed water and (2) are more effective than the best available technology (BAT) for removal of nitrogen approved by MDE. The regulations must (1) update the evaluation criteria used in reviewing the design of an OSDS for a nonresidential use and in determining the adequate size of a sewage disposal area and (2) increase the maximum hydraulic loading rate that may be considered to 2.5 gallons per day per square foot (gpd/ft²) for a nonresidential system using MBR technology and adjusted based on site-specific factors, including nutrient reduction requirements, percolation rates, and other site conditions and constraints.

Aquaculture

HB 1200/SB 964 - Aquaculture - Leases - Submerged Aquatic Vegetation. This emergency bill requires the Department of Natural Resources (DNR), in consultation with interested stakeholders, to (1) study the conflicts that arise when implementing its policies of protecting submerged aquatic vegetation (SAV) and promoting aquaculture in the State and (2) develop solutions to these conflicts that take into account the benefits provided by both SAV and aquaculture. DNR must report its findings and

recommendations, including any proposed legislation, to the Governor and the General Assembly by December 1, 2017. DNR may adopt regulations that establish standards and a process under which the department may assess and evaluate an aquaculture lease on which SAV has encroached to determine if aquaculture activity on the lease must be restricted or prohibited due to the circumstances of the encroachment.

Maryland Budget Actions

Capital Budget- reflects GO bonds, bond premiums, general, special and federal funds.

- 2010 Trust Fund- \$52 million (fully funded for the first time since its creation in 2007)
- Program Open Space Stateside- \$28.0 million
- Program Open Space Local- \$37.2 million
- Rural Legacy- \$22.9 million
- DNR Oyster Restoration Program- \$2.7 million
- DNR Coastal Resilience Program - \$0.5 million
- Md. Agricultural Land Preservation Program- \$32.9 million
- Md. Agricultural Cost Share Program- \$8.0 million
- Md. Dept. of Environment Septic System Upgrade Program- \$15 million
- MDE Biological Nutrient Removal Program- \$49.1 million
- MDE Water Quality Revolving Loan Fund- \$336.8 million

PENNSYLVANIA

Chesapeake Bay-related legislation as of 5-01-2017 (Pennsylvania has a full-time two-year Session that began in January 2017)

Water Use Fee

Representative Mike Sturla has circulated a co-sponsorship memo for legislation (not yet introduced) to create a new water resources fund in Pennsylvania. Revenue for the fund would come from a new water use fee of 1/100th of a cent per gallon (\$0.0001) for water withdrawals greater than 10,000 gallons per day for non-agricultural, non-public or non-municipal uses would be assessed and 1/10th of one cent per gallon (\$0.001) for water consumption (withdrawn but not returned) greater than 10,000 gallons per day for non-agricultural, non-public and non-municipal uses would be assessed.

Based on current consumption and usage rates the water resource fee would generate approximately \$250 million annually. The proceeds would be allocated as follows:

\$30 million for the Department of Environmental Protection.

\$25 million for the Department of Conservation & Natural Resources.

\$5 million for the Department of Agriculture.

\$5 million for the Fish & Boat Commission.

The remainder of the proceeds would fund water-related projects and be distributed proportionately across the six major watersheds based on where the fees are generated.

Growing Greener III

Senator Rich Alloway has circulated a co-sponsorship memo for legislation (not yet introduced) to authorize \$315 million annually for the state's "Growing Greener" program that funds open space, recreation and water quality projects across the Commonwealth.

Preferential Assessment

HB 1053 (Sturla) would require landowners enrolled in the preferential real estate assessment program known as "Clean & Green" to be in compliance with environmental regulations, including agriculture erosion & sedimentation plans and manure management/nutrient management plans. (In House Agriculture & Rural Affairs Committee)

Lawn Care

Senator Rich Alloway has circulated a co-sponsorship memo for legislation (not yet introduced) that would require certification of professional fertilizer applicators and include application requirements for lawn fertilizer.

On-Site Systems

SB 144 (Yaw) would allow for site planning to consider the use of alternative on-site sewage systems, instead of only considering "conventional" systems. (currently before the full Senate)

Livestock Exclusion

HB 1060 (Sturla) would remove the current provision of the Clean Streams Law that prohibits any requirement for livestock stream exclusion. (In House Environmental Resources & Energy Committee)

Anaerobic Digesters

HB 556 (Zimmerman) would prohibit the Public Utility Commission from restricting the size of methane digesters. (In House Consumer Affairs Committee)

Stormwater

HB 913 (Everett) would allow a town to enact a stormwater fee without having to create a municipal authority.

HB 914 (Everett) would allow a borough, first class township or third class city to enact a stormwater fee without having to create a municipal authority.

(Both bills are in the House Local Government Committee)

Electronics Recycling

Senator Rich Alloway has circulated a co-sponsorship memo for legislation (not yet introduced) that would correct deficiencies in the current "Covered Device Recycling Act" that calculates electronics recycling fees based on the weight of covered products manufactured the previous year. As products

become lighter with improved technology, the fees are no longer adequate to cover the cost of recycling older products.

Pharmaceuticals

HB 1132 (Kortz) would establish a safe collection and disposal program for pharmaceuticals, funded by pharmaceutical manufacturers. (In House Health Committee)

Fish & Boat Commission

SB 30 (Eichelberger) and HB 554 (Wheeland) would allow the PA Fish & Boat Commission to establish its own fees. Currently the fees are established by legislation. (In House Game & Fisheries Committee)

Chesapeake Bay Awareness Week

Representative Garth Everett has circulated a co-sponsorship memo for a resolution (not yet introduced) to designate June 4-10, 2017 as Chesapeake Bay Awareness Week in Pennsylvania.

Chesapeake Bay Foundation

HR 231 (Everett) would recognize the 50th anniversary of the Chesapeake Bay Foundation. (Is currently before the full House)

Senator Gene Yaw has circulated a co-sponsorship memo for a Senate version of the resolution.