

Department of Planning and Budget 2012 Fiscal Impact Statement

1. Bill Number: SB77

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Watkins

3. Committee: Agriculture, Chesapeake and Natural Resources

4. Title: Nutrient credit certification; regulations.

5. Summary: This bill (i) amends the State Water Control Act; (ii) amends current law regarding stormwater nonpoint nutrient offsets; (iii) establishes the Nutrient Trading Act; and (iv) contains enactment clauses.

(i) Amends the State Water Control Act:

- a. Allows point source credits to be used for waste load allocations; specifies that allocations or credits shall be provided for a minimum of five years with each registration under the general permit.
- b. Specifies that best management practices are to achieve reductions aligned with the “Virginia Chesapeake Bay TMDL Watershed Implementation Plan” instead of the “Virginia tributaries strategies,” in addition to other state and federal laws.
- c. Authorizes the State Water Control Board to adopt regulations for the certification of point source nutrient credits, including the establishment of a reasonable application fee schedule not to exceed \$10,000 per application. Also authorizes the Department of Environmental Quality (DEQ), as overseer of the State Water Control Board, to inspect and audit for compliance with the regulations.

(ii) Amends stormwater nonpoint nutrient offset law:

- a. Replaces references to “nonpoint nutrient offset” with “nutrient credit” or “credit.”
- b. Specifies the definition of “tributary” for areas outside of the Chesapeake Bay watershed.
- c. Provides that nutrient credits or other offsite options that preclude or impair compliance with local water quality limitations cannot be used to address water quality control requirements.
- d. Provides that the current water quality enhancement fee equal to six percent of the amount paid by the permittee for credits, shall be replaced by an application fee schedule not to exceed \$10,000 per application, upon the effective date of regulations in accordance with the Nutrient Trading Act established by this bill.
- e. Requires applicants to report to the Department of Conservation and Recreation (DCR), information regarding all off-site reductions that have been authorized to

meet stormwater post development nonpoint nutrient runoff compliance requirements.

- f. Provides that an applicant or permittee found to be in noncompliance shall be subject to enforcement and penalty provisions of the article.

(iii) Establishes the Nutrient Trading Act (Article 1.1:1):

a. Definitions:

- i. “Best management practices, BMPs” are management practices, either structural or nonstructural, used to prevent or reduce nutrient loads reaching surface waters or the adverse affects thereof;
- ii. “Board” is the Virginia Soil and Water Conservation Board;
- iii. “Department” is the Department of Conservation and Recreation (DCR);
- iv. “MS4” is a municipal separate storm sewer system; and
- v. “Nutrient credit” or “credit” is a nutrient reduction certified by this article and expressed in pounds of phosphorus or nitrogen.

b. Nutrient credit certification:

- i. Authorizes the Board to adopt regulations for the certification of nonpoint nutrient credits; such regulations shall include provisions such as:
 1. Procedures for the certification and registration of nutrient credits:
 - a. Credits may be generated from BMPs, converted from wetland or stream credits established after July 1, 2005;
 - b. Credits may be bundled as a package from multiple practices;
 - c. Credits generated from activities funded by federal or state water quality grants shall not be certified;
 - d. A reasonable application fee schedule, not to exceed \$10,000 per application, may be established; and
 - e. Public notice is required for a proposed nutrient credit generating facility.
 2. Procedures for credit calculation:
 - a. Establish baselines and baseline dates for agricultural practices, urban practices, land use conversion, and other potential credit generating practices, based on the Virginia Chesapeake Bay TMDL (total maximum daily load) Watershed Implementation Plan or other approved TMDLs;
 - b. Establish calculation procedures for the determination of credit amounts.
 3. Term of certification of credits (minimum of 12 months).
 4. Requirements regarding reporting, the generation of the credit, and the associated financial assurance; ensure that these requirements do not eliminate any overriding water quality requirements.
 5. Establish a credit retirement requirement whereby five percent of credits in the Chesapeake Bay watershed are permanently retired at the time of certification.

- ii. Permits DCR to establish and maintain a free, public, online registry of certified credits.
- c. Nutrient credit use by regulated entities:
 - i. Authorizes the acquisition and use of nutrient credits, in accordance with specified restrictions provided by the bill, by:
 - 1. MS4 permittees;
 - 2. Applicants required to comply with water quality requirements for land disturbing activities operating under a General Virginia Stormwater Management Program (VSMP) permit;
 - 3. Confined animal feeding operating issued permits pursuant to the State Water Control Law; and
 - 4. Facilities registered under the Industrial Stormwater General Permit issued pursuant to the State Water Control Law.
 - ii. Requires DCR or the State Water Control Board to give public notice of each compliance plan submitted for approval that includes the use of nutrient credits.
- d. Enforcement and Penalties:
 - i. Authorizes DCR to suspend the transfer of nutrient credits for operators until they are in compliance with the provisions of this bill and attendant regulations.
 - ii. Provides that a civil penalty may be assessed for any one violation of the provisions of this bill or attendant regulations; establishes a maximum penalty of \$10,000 for any one violation.
- e. Appeals
 - i. Establishes an appeals process according to the Administrative Process Act for any person or operator of a nutrient credit generating facility aggrieved by any action or inaction of DCR in relation to the provisions of this bill.

(iv) Contains enactment clauses:

- a. Provides that nutrient credits from stormwater nonpoint nutrient credit generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from DEQ prior to July 1, 2012, shall be considered certified nutrient credits and therefore are not required to abide by subdivision B 8 of § 10.1-603.15:2 of this bill, which requires an entity to establish a credit retirement requirement whereby five percent of credits in the Chesapeake Bay Watershed are permanently retired at the time of certification.
- b. Provides that, by July 1, 2013, the State Water Control Board shall establish an advisory group to reevaluate its trading ratio for nutrient allocation acquisition and, as warranted based on the outcome of the reevaluation, shall adopt a revised trading ratio.

- c. Provides that the State Water Control Board shall continue to certify nutrient credits pursuant to current law until the regulations associated with the Nutrient Trading Act established by this bill are effective.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary.

8. Fiscal Implications: The bill authorizes the Virginia Soil and Water Conservation Board, as overseen by DCR, and the State Water Control Board, as overseen by the Department of Environmental Quality (DEQ), to establish a timely and efficient process for the certification of nutrient credits, including an application fee schedule not to exceed \$10,000 per application.

According to DCR, revenue generated from the application fee schedule authorized by this bill is anticipated to amount to current levels of revenue associated with the current water quality enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient offsets (or “credits” as the bill renames them).

According to DEQ, this bill is not anticipated to result in additional revenue for the agency.

According to both DEQ and DCR, any administrative costs resulting from the provisions of this bill can be absorbed within existing resources and the fees provided within this bill. However, DCR notes that once the program is implemented and further expands, additional programmatic support paid for by the fees may need to be considered in order to continue to provide timely customer service.

It is not known the number of civil penalties that will result from the provisions of this bill. As such, any revenue resulting from penalties assessed is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Conservation and Recreation, Department of Environmental Quality.

10. Technical Amendment Necessary: Yes:

- Line 25, strike duplicate “for”;
- Line 26, after “Bay”, capitalize “watershed” to be consistent with lines 146 and 190;
- Line 263, after “in the provisions of a”, insert “Virginia Pollutant Discharge Elimination System”, as this is the first reference to permits in this article; and
- Lines 268-269; strike “Virginia Pollutant Discharge Elimination System”.

11. Other Comments: The substitute version of HB176 is identical to this bill.

Date: 2/13/2012