



CHESAPEAKE BAY COMMISSION

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2016 General Assembly Session Virginia, Maryland and Pennsylvania

May 12-13, 2016 - CBC Meeting- Bethesda, MD

VIRGINIA

Resolutions

HJ 31 Delegate Lingamfelter and Senator Hanger: Designates the second week in June, in 2016 and in each succeeding year, as Chesapeake Bay Awareness Week in Virginia.

HJ 32 Delegate Lingamfelter and Bulova and Senator Hanger: Commending Clyde Bernard Fowler.

Chesapeake Bay Clean-up and Terminology

HB 208 Delegate Bulova: Removes out of date references to the tributary strategy plans.

HB 440 Delegate Lingamfelter: Reduces from semiannual to annual the requirement in the Chesapeake Bay and Virginia Waters Clean-Up and Oversight Act that the Secretary of Natural Resources submit a progress report on the implementation of the impaired waters clean-up plan to several legislative oversight committees.

Agriculture

HB 238 and SB 652 Delegates Lingamfelter, Bulova, Kilgore, Landes and Peace and Senators Lewis and Hanger: Provides an exception to the prohibition against officers and employees having contracts with their employing agencies for contracts by an officer or employee of a soil and water conservation district to participate in the Virginia Agricultural Best Management Practices Cost-Share Program. The exception does not apply to subcontracts or other agreements entered into to provide services for implementation of a cost-share contract established under the Program. The exception applies to contracts entered into prior to July 1, 2016.

HB 318 Delegate Lingamfelter: Directs the Virginia Soil and Water Conservation Board to adopt regulations establishing a standard for the acceptable rate of phosphorus application to lands from the use of fertilizer, animal manure, poultry waste, sewage sludge, and industrial sludge to protect water quality. In developing the standard, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and Virginia Polytechnic Institute and State University, is given responsibility for conducting the scientific research for establishing the basis for the phosphorous standard. *(Bill was stricken from the docket.)*

Beach Restoration and Living Shorelines

HB 327 and SB 307 Delegate Bloxom and Senator Lewis: Directs the Virginia Marine Resources Commission to develop an expedited process for issuing a permit for emergency sand restoration activities on a publicly owned beach when the erosion is caused by a discrete, identifiable weather event that was the subject of a local or state declaration of emergency.

HB 526 Delegate Hodges: Provides that any living shoreline project approved by the Virginia Marine Resources Commission or the applicable local wetlands board and not prohibited by local ordinance shall qualify for full exemption from local property taxes.

Trading and Offsets

HB 438 and SB 292 Delegates Bulova, Lingamfelter, and Rasoul and Senator Hanger: Authorizes Municipal Separate Storm Sewer System (MS4) permittees to acquire and use sediment reduction credits as part of a compliance strategy for implementing the Chesapeake Bay TMDL. The sediment credits cannot be used if they are associated with phosphorus credits used in stormwater nonpoint nutrient runoff water quality criteria.

HB 448 and SB 314 Delegates Cox and Ingram and Senators Dance, Chase and Sturtevant: Allows a new or expanding facility registered under the Watershed General Permit to acquire nutrient offset credits, on land located in the same tributary as the facility, on which best management practices have been implemented that would achieve reductions greater than those currently required by federal or state law or the Chesapeake Bay TMDL Watershed Implementation Plan. Provides that any such acquisition is subject to approval by the State Water Control Board. Enables an applicant under the Watershed General Permit to join the Virginia Nutrient Credit Exchange Association.

SB 443 Senator Hanger: Directs the State Water Control Board (the Board) to establish a timeline for consideration of applications for land conversion projects. The Department of Environmental Quality will be required to deny, approve, or approve with conditions an application within 15 days of determining that the application is complete. Directs the Board to certify credits that are located in tributaries outside the Chesapeake Bay Watershed.

Resiliency

HB 903 Delegates Stolle, Bloxom, Davis, Hester, Lindsey, Mason and Spruill and Senators Lewis, Locke and Miller: Designates the Commonwealth Center for Recurrent Flooding Resiliency jointly at Old Dominion University, the Virginia Institute of Marine Science, and The College of William and Mary to (i) serve, advise, and support the Commonwealth by conducting interdisciplinary studies and investigations and (ii) provide training, technical and nontechnical services, and outreach in the area of recurrent flooding and resilience research to the Commonwealth and its political subdivisions.

SB 282 Senator Lewis: Establishes the Virginia Shoreline Resiliency Fund for the purpose of creating a low-interest loan program to help residents and businesses that are subject to recurrent flooding. Moneys from the Fund may be used to mitigate future flood damage.

Stormwater

HB 1250 and SB 673 Delegates Wilt and Bulova and Senator Hanger: Combines existing statutory programs relating to soil erosion and stormwater management, directing the State Water Control Board (the Board) to permit, regulate, and control both erosion and stormwater runoff. Requires any locality that operates a municipal separate storm sewer system (MS4) or a Virginia Stormwater Management Program (VSMP) to adopt a Virginia Erosion and Stormwater Management Program (VESMP) that regulates any land-disturbing activity that disturbs an area of 10,000 square feet or more, or 2,500 square feet or more if in a Chesapeake Bay Preservation Area. A locality that lacks an MS4 and for which the Department of Environmental Quality (DEQ) is currently administering a VSMP is required to (i) adopt such a VESMP, (ii) adopt such a VESMP with DEQ conducting plan review and making recommendations on the compliance of each plan with technical criteria, or (iii) continue to operate a separate Virginia Erosion and Sediment Control Program (VESC) that regulates any disturbance of 10,000 square feet or more and, in a Preservation Area, regulates a disturbance of 2,500 square feet or more and meets certain other requirements. Any eligible locality that chooses the third option is to have a VSMP administered on its behalf by the Board for any land-disturbing activity that disturbs one acre or more of land, including an activity that disturbs a smaller area but is part of a larger development that results in a disturbance of one acre or more. Towns are afforded additional options in relation to the counties in which they are located.

Directs certain charges or penalties to the Stormwater Local Assistance Fund, which provides matching grants to local governments for stormwater best management practices. Directs DEQ to evaluate fees related to the consolidated Virginia Erosion and Stormwater Management Program and directs the Board to adopt regulations to carry out the purposes of the bill, delaying the effective date of the bill until the later of July 1, 2017, or 30 days after the adoption of such regulations.

SB 468 Senator Wagner: Authorizes the creation of public-private stormwater management programs and adds contracting for the construction and operation of stormwater management facilities to the list of activities for which a local stormwater utility is authorized to recover charges.

SB 598 Senator DeSteph: Clarifies that certain flow rate capacity and velocity requirements for plans approved on and after July 1, 2014, shall be satisfied by compliance with Virginia Stormwater Management Program (VSMP) Regulations where the land-disturbing activity is conducted in accordance with extended permit coverage regulations.

Biosolids

HJ 120 Delegates Landes, Ware and Peace: Directs the Joint Legislative Audit and Review Commission (JLARC) to conduct a two-year study of biosolids and industrial residuals in Virginia. Directs JLARC to analyze scientific literature on the health effects of biosolids (treated sewage sludge) and industrial residuals (wastes resulting from industrial processes), evaluate the feasibility of requiring municipal utilities that are currently permitted to generate "Class B" material to upgrade their facilities to generate "Class A" material, and undertake other analyses.

Fisheries

SB 283 Senator Lewis: Directs the Virginia Marine Resources Commission to charge recreational gear license fees of \$36 for crab pots with turtle excluder devices and \$46 for crab pots without such devices.

SB 284 Senator Lewis: Limits to public oyster grounds or unleased bottom open for harvest during the legally prescribed oyster season the taking of one bushel of oysters in any one day for personal use for purposes of the current exemptions (i) from licensing requirements and (ii) for the taking of oysters on Sunday during daylight hours.

SB 529 Senator Stuart: Increases the total allowable landings for menhaden from 144,272.84 metric tons per year to 158,700.12 metric tons per year. Repeals the sunset provision that would have removed the Virginia Marine Resources Commission's authority to establish the annual harvest cap for the purse seine fishery for Atlantic menhaden.

Virginia Budget/Bond Legislation

\$74 million for the Agriculture BMP Cost Share Program, including funding for technical assistance provided by local SWCDs and, at a minimum, \$30 million for livestock stream exclusion projects.

\$8 million for the Water Quality Improvement Fund reserve.

\$59 million in bonds to upgrade Wastewater Treatment Plants.

\$20 million in bonds for the Stormwater Local Assistance Fund.

\$20 million over the biennium for land preservation including, \$16 million for the Virginia Land Conservation Foundation, \$2 million for battlefield preservation and \$2 million for farmland preservation.

\$56,500 each year in additional funding for the Chesapeake Bay Commission.

\$200,000 each year for the Shoreline Erosion Advisory Services Program.

\$500,000 each year for the Natural Heritage Program in support of active preserve management activities.

\$41 million in bonds for new infrastructure at state parks, including early development of Widewater State Park.

\$2 million each year to support oyster replenishment activities.

Budget language regarding NRCS engineering services: *Notwithstanding § 54.1, Chapter 4, the U.S. Department of Agriculture's Natural Resources Conservation Service and Department of Conservation and Recreation Central Office staff may provide engineering services to the Department of Conservation and Recreation and the local Soil and Water Conservation Districts for design and construction of agriculture best management practices.*

Budget language expanding use of the Stormwater Local Assistance Fund: *The grants shall be used only for the **acquisition of certified nonpoint nutrient credits** and capital projects meeting all pre-requirements for implementation, including but not limited to: i) new stormwater best management practices; ii) stormwater best management practice retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration. Such grants shall be in accordance with eligibility determinations made by the State Water Control Board under the authority of the Department of Environmental Quality.*

Budget language regarding nutrient offsets: *The Virginia Economic Development Partnership shall transfer to the Department of Environmental Quality up to \$250,000 of the amounts appropriated in this item to conduct research and for other appropriate costs associated with the development of a long-term offsetting methods within the Virginia Nutrient Credit Exchange. The Virginia Economic Development Partnership shall work in conjunction with the Department of Environmental Quality to develop the long-term offsetting methods.*

MARYLAND

Sen. Bernie Fowler (sponsored by CBC)- CBC's Senate and House Resolution's to honor Bernie Fowler were unanimously adopted, and presented to Sen. Fowler's son, Bernie Fowler Jr. ,and his wife Rose, and Sen Fowler's daughter, Mona Lisa Monsma, on Feb. 16, 2016.

Program Open Space (sponsored by CBC and Admin)

HB 462 (Admin) - The Delegations' bill to protect funding for land conservation was incorporated into the Governors' bill that decreased preauthorized transfers from the fund by \$20 million in FY'17 and \$40 million in FY'18, and was signed on April 4, 2016. The provisions from the CBC bill include a requirement to repay future diversions over three successive years following any transfer, repayment of FY '16, '17 and '18 diversions, reallocation of \$90 million repayment owed from the 2006 (\$5.0 million to the Next Generation Farmland Acquisition Program fiscal in 2018, \$45.0 million back to POS programs by formula from fiscal 2019 through 2021, and \$40.0 million to park development and critical maintenance projects on lands managed by the Department of Natural Resources from fiscal 2019 through 2025.)

Chesapeake Bay Awareness Week (sponsored by CBC)

SB 620- Designates the second week in June as Chesapeake Bay Awareness Week. The bill encourages citizens and groups to hold events that educate, inspire, and increase enthusiasm and support among residents of the watershed for restoring the Bay, with the goal of increasing the number and diversity of citizen stewards. CBF, the Alliance for the Chesapeake Bay, Choose Clean Water and the Commercial Fisherman's Association were named as organizations to help promote this week.

Oysters and Aquaculture

SB 937- Sustainable Oyster Harvest Act (Manno/ Frush) - Requires DNR, in coordination with University of MD Center for Environmental Science, to lead a study to determine sustainable harvest rates for the public oyster fishery, develop appropriate indicators for the public oyster fishery based on stock assessments and real data, and determine whether the public oyster fishery is experiencing overfishing.

Based on the determination of whether the oyster fishery is operating within the Biological Reference Points, DNR, through a public process, must identify management strategies for the oyster population and fishery. DNR must submit a report to the Governor, General Assembly and Oyster Advisory Commission by Dec.1 2018.

HB 799- Establishes that a person who willfully, negligently, recklessly, wrongfully, or maliciously enters any area leased to another person for aquaculture purposes to harvest, damage, or transfer shellfish or to alter, damage, or remove any markings or equipment is, in addition to being liable to the leaseholder, liable to any agent, employee, business partner, or contractor of the leaseholder.

HB 1527- An emergency measure that exempts the use of tidal waters for oyster aquaculture purposes from the requirement to obtain a water appropriation and use permit if the water is returned to the same body of water from which it is appropriated.

Green House Gas Emissions

SB 323 Repeals the termination date of the current requirement to reduce GHG emissions by 25% from 2006 levels by 2020 and establishes a new reduction requirement, requiring the State to develop plans, adopt regulations, and implement programs to reduce GHG emissions by 40% from 2006 levels by 2030. This 2030 reduction requirement terminates December 31, 2023.

Pollinator Protection

SB 198 /HB 211- Pollinator Protection Act of 2016- Bans the sale and use of neonicotinoids for the general public by Jan 2018. It does not ban farmer use of the neonics and it does allow certified applicators and veterinarian to apply the product, and has exceptions for flea, tick and beg bug applications. It also requires MD to reevaluate after EPA concludes its risk assessment study on neonics. Requires require MDA to incorporate pollinator habitat expansion and enhancement practices into the State's managed pollinator protection plan.

HB 132- Requires the Department of Natural Resources, the Maryland Environmental Service, and the State Highway Administration to each establish, in consultation with MDA, a pollinator habitat plan by July 1, 2017, and implement the plan by July 1, 2018. A pollinator habitat plan must include best management practices for the maintenance, creation, enhancement, and restoration of pollinator habitats and must adhere to MDA's managed pollinator protection plan.

SB 113- Repeals (1) the requirement that a person request an entry permit from MDA before shipping or transporting any bee colony or used bee equipment into the State and (2) the prohibition against shipping or transporting into the State a colony or equipment that is not accompanied by an entry permit. However, the Act maintains (1) the requirement that an inspection certificate from the state of origin be submitted to MDA before shipping or transporting a bee colony or used bee equipment into the State and (2) the requirement that the inspection certificate accompany the colony or equipment. The Act also modifies a provision governing MDA's enforcement actions to apply in any case where a colony or bee is transported into the State in a manner that does not meet applicable requirements.

Fishing Gear for Invasive Catfish and Snakeheads

HB 63- Authorizes DNR, in consultation with the Tidal Fisheries Advisory Commission and the Sport Fisheries Advisory Commission, to adopt regulations defining and governing the use of commercial finfish trotlines. Finfish trotlines are an effective gear to harvest the invasive blue and flathead catfish. The Act terminates on June 30, 2019.

SB 1054/ HB 1387 - Establishes a commercial northern snakehead bowfishing license, authorizing the holder to catch for sale northern snakeheads in the tidal waters of the State using a bow and arrow attached to a retrieval line. The term of a license is one year and the annual license fee is \$15.

Septic Systems

HB 90- Expands the authorized uses of the BRF Septics Account to include providing financial assistance to low-income homeowners for up to 50% of the cost of an operation and maintenance contract of up to five years for an on-site sewage disposal system that utilizes nitrogen removal technology. Either MDE or a local government must determine an applicant's eligibility and the level of assistance to be provided based on the average cost of such a contract provided by vendors in the applicant's area.

Wetlands Mitigation Banking

HB 797- Repeals provisions of law that establish compensation ratios for wetland mitigation through mitigation banks. The bill also repeals the preference for on-site alternatives and sites in the same watershed and county as the project requiring mitigation during the mitigation siting process. Instead, mitigation through a mitigation bank must be accomplished within a "service area," as determined by MDE. A "service area" is defined as the geographic area within which impacts can be mitigated at a specific mitigation bank, as designated in its instrument. Requires public notice and comment when siting any wetland bank, not just those that are greater than five acres in size.

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- \$25 mill
 - Program Open Space Local- \$21 mill
 - Rural Legacy- \$17.6mill
 - DNR Oyster Restoration Program- \$3.3 mill
 - Md. Agricultural Land Preservation Program- \$21.2 mill
 - Md. Agricultural Cost Share Program- \$6 mill
 - Md. Dept. of Environment Septic System Upgrade Program- \$14 mill
 - MDE Biological Nutrient Removal Program- \$25 mill
 - MDE Water Quality Revolving Loan Fund- \$130 mill
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- Although there was no Budget Reconciliation and Financing Act (BRFA) this year, there was a pre-authorized transfer of \$62.7 million from Program Open Space funds to the General Fund.

PENNSYLVANIA

Chesapeake Bay-related legislation as of 5-10-2016

Water Use Fee

To Be Introduced (Sturla) – Would create a \$0.0001/gallon fee for water withdrawals greater than 10,000 gallons per day and a \$0.001/gallon fee for consumptive water uses. Would exempt agricultural or public uses. Revenue would be deposited to a new Water Use Fund and used to pay the debt service on a new \$3B bond issue for water-related projects, and to fund water-related programs at DEP, DCNR and the Fish & Boat Commission.

To Be Introduced (Everett) – Would direct the Legislative Budget and Finance Committee to study the establishment of a fee for both the consumptive use and for the use and return of water for the purposes of establishing a Water Quality Improvement fund.

Preferential Assessment

HB 1447 (Sturla) – Would require compliance with environmental requirements such as Erosion & Sedimentation Control Planning, Manure Management Planning, Nutrient Management Planning, etc. as a condition for preferential assessment of ag and forest land. (In House Ag & Rural Affairs Committee)

Lawn Care

SB 563 (Alloway) – Would require limits for fertilizer application to turf and certification for professional applicators. (In Senate Ag & Rural Affairs Committee)

Plastics

SB 672 (Willey, Alloway and Yaw) – Would prohibit the manufacture and sale of personal care products and over-the-counter drugs containing synthetic plastic microbeads. (In Senate Environmental Resources & Energy Committee)

SB 540 (Leach) – Would impose a \$0.02 point-of-sale fee on plastic bags in retail establishments. (In Senate Finance Committee)

Pharmaceuticals

HB 1737 (Maher) – Would allow waste-to-energy facilities to dispose of pharmaceuticals gathered by safe collection programs. (In the House)

On-Site Systems

SB 1114 (Yaw) – would allow for the consideration of alternative on-site septic systems when evaluating land development plans. (In Senate Environmental Resources & Energy Committee)

SB 780 (Wozniak) – would lift the cap on the fee a local government can charge for verifying that a proposed non-permitted septic system is in compliance with siting requirements. (In Senate Environmental Resources & Energy Committee)

Anaerobic Digesters

SB 844 (Vogel) and HB 1349 (Zimmerman) - Would exempt anaerobic digesters from electricity generation caps. (In Senate Consumer Protection & Professional Licensure and House Consumer Affairs Committees, respectively)

Stormwater

HB 1325, 1394 and 1661 (Mustio) – Would allow certain local governments to assess stormwater fees without going through a municipal authority. (In the Senate)

Fish & Boat Commission

SB 1168 (Eichelberger) – Would allow the PA Fish & Boat Commission to establish its license fees by regulation, rather than by legislation. (In the Senate)

Chesapeake Bay Awareness Week

SR 325 (Yaw) and HR 739 (Everett) – Designates the week of June 5-11, 2016 as “Chesapeake Bay Awareness Week in Pennsylvania. (Passed)