

SENATE BILL NO. 187

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 8, 2022)

(Patron Prior to Substitute--Senator Hanger)

A BILL to amend and reenact § 62.1-44.19:20 of the Code of Virginia, relating to accelerated stream  
nutrient credit release.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.19:20 of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.19:20. Nutrient credit certification.**

A. The Board may adopt regulations for the purpose of establishing procedures for the certification  
of point source nutrient credits except that no certification shall be required for point source nitrogen and  
point source phosphorus credits generated by point sources regulated under the Watershed General  
Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board  
shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source  
nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices,  
including activities associated with the types of facilities or practices historically regulated by the Board,  
such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best  
management practices, use or management of manures, managed turf, land use conversion, stream or  
wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of  
nutrient control or removal, as appropriate;

26 c. Establishing a process and standards for wetland or stream credits to be converted to nutrient  
27 credits. Such process and standards shall only apply to wetland or stream credits that were established  
28 after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be  
29 used for both wetland or stream credit and nutrient credit purposes;

30 d. Certifying credits from multiple practices that are bundled as a package by the applicant;

31 e. Prohibiting the certification of credits generated from activities funded by federal or state water  
32 quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels  
33 may be achieved through the use of such grants;

34 f. Establishing a timely and efficient certification process including application requirements, a  
35 reasonable application fee schedule not to exceed \$10,000 per application, and review and approval  
36 procedures;

37 g. Requiring public notification of a proposed nutrient credit-generating entity; and

38 h. Establishing a timeline for the consideration of certification applications for land conversion  
39 projects. The timeline shall provide that within 30 days of receipt of an application the Department shall,  
40 if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall  
41 either determine that the application is complete or request additional specific information from the  
42 applicant. A determination that an application for a land conversion project is complete shall not require  
43 the Department to issue the certification. The Department shall deny, approve, or approve with conditions  
44 an application within 15 days of the Department's determination that the application is complete. When  
45 the request for credit release is made concurrently with the application for a land conversion project  
46 certification, the concurrent release shall be processed on the same timeline. When the request for credit  
47 release is from a previously approved land conversion project, the Department shall schedule a site visit,  
48 if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release  
49 within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in  
50 this subdivision shall be implemented prior to adoption of regulations. The Department shall release  
51 credits from a land conversion project after it is satisfied that the applicant has met the criteria for release  
52 in an approved nutrient reduction implementation plan.

- 53           2. Establish credit calculation procedures for proposed credit-generating practices, including the  
54 determination of:
- 55           a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable  
56 provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;
  - 57           b. Baselines established for agricultural practices, which shall be those actions necessary to achieve  
58 a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or  
59 approved TMDLs as implemented on the tract, field, or other land area under consideration;
  - 60           c. Baselines for urban practices from new development and redevelopment, which shall be in  
61 compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management  
62 Program regulations. Baselines for all other existing development shall be at a level necessary to achieve  
63 the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed  
64 Implementation Plan or approved TMDLs;
  - 65           d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the  
66 level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or  
67 approved TMDLs applicable to that land use;
  - 68           e. Baselines for other nonpoint source credit-generating practices, which shall be based on the  
69 Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best  
70 available scientific and technical information;
  - 71           f. Unless otherwise established by the Board, for certification within the Chesapeake Bay  
72 Watershed a credit-generating practice that involves land use conversion, which shall represent controls  
73 beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the  
74 practice shall represent controls beyond those in place at the time of TMDL approval;
  - 75           g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia  
76 Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and
  - 77           h. Credit quantities, which shall be established using the best available scientific and technical  
78 information at the time of certification;

79           3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years,  
80 or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a  
81 term of no less than 12 months;

82           4. Establish requirements to reasonably assure the generation of the credit depending on the nature  
83 of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and  
84 maintenance requirements, and associated financial assurance requirements. Financial assurance  
85 requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are  
86 used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a  
87 point source permitted under this article, its existing tax or rate authority. Notwithstanding any release  
88 schedule set out in regulations of the Board, the Department may adopt guidance allowing for the  
89 accelerated release of a maximum of 50 percent of nutrient credits from a stream restoration project based  
90 on (i) a determination that the level of risk for restoration failure is low, (ii) the provision of additional  
91 financial assurance in an amount adequate to cover the cost of project repair or replacement in the event  
92 of failure, and (iii) the experience of the applicant or the applicant's agents who will implement the stream  
93 restoration project;

94           5. Establish appropriate reporting requirements;

95           6. Provide for the ability of the Department to inspect or audit for compliance with the  
96 requirements of such regulations;

97           7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate  
98 any requirement to comply with local water quality requirements;

99           8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the  
100 Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently  
101 retired at the time of certification pursuant to this section for the purposes of offsetting growth in  
102 unregulated nutrient loads; and

103           9. Establish such other requirements as the Board deems necessary and appropriate.

104           C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated  
105 from effective nutrient controls or removal practices, including activities associated with the types of

106 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and  
107 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available  
108 scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake  
109 Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each  
110 practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from  
111 Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for  
112 Agricultural Landowners and Your Potential Trading Partners. "

113 D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of  
114 credits as follows:

115 1. The registry shall include all nonpoint source credits certified pursuant to this article and may  
116 include point source nitrogen and point source phosphorus credits generated from point sources covered  
117 by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant  
118 to this section at the option of the owner. No other credits shall be valid for compliance purposes.

119 2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such  
120 credits from transferring the credits on such commercial terms as may be established by and between the  
121 owner and the regulated or unregulated party acquiring the credits.

122 3. The Department shall establish procedures for the listing and tracking of credits on the registry,  
123 including but not limited to (i) notification of the availability of new nutrient credits to the locality where  
124 the credit-generating practice is implemented at least five business days prior to listing on the registry to  
125 provide the locality an opportunity to acquire such credits at fair market value for compliance purposes  
126 and (ii) notification that the listing of credits on the registry does not constitute a representation by the  
127 Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the  
128 prospective user's intended use and that the prospective user is encouraged to contact the Board for  
129 technical assistance to identify limitations, if any, applicable to the intended use.

130 4. The registry shall be publicly accessible without charge.

**131** E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply  
**132** with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-  
**133** 44.19:22.

**134** F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a  
**135** Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall  
**136** be considered certified nutrient credits and shall not be subject to further certification requirements or to  
**137** the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the  
**138** other provisions of this article, including registration, inspection, reporting, and enforcement.

**139** #