WEST VIRGINIA CODE: §22-11-30

§22-11-30. Chesapeake Bay Restoration Initiative.

(a) The Legislature finds and declares that:

(1) The Chesapeake Bay and its tributaries are valuable natural resources providing both recreational and economic opportunities to citizens living in and around the Chesapeake Bay watershed. Eight West Virginia counties, and a collective population of more than two hundred thousand citizens, are within the Chesapeake Bay watershed. The protection and promotion of the environmental health and integrity of the Chesapeake Bay is accordingly in the best interests of the State of West Virginia.

(2) The Chesapeake Bay has been identified by the United States Environmental Protection Agency as an impaired water due to excess nitrogen and phosphorous entering the bay from its various tributaries. These pollutants, commonly referred to as nutrients, result in depleted dissolved oxygen supplies and other factors which impact the overall health of the Chesapeake Bay and its watershed.

(b) West Virginia is among six states from which nutrients flow into the Chesapeake Bay. In order to restore the Chesapeake Bay, these states have agreed to reduce the amount of nutrients contributed to the Chesapeake Bay by sources located within their respective jurisdictions.

(c) Among the sources of nutrients discharged into the Chesapeake Bay watershed are wastewater discharged by West Virginia wastewater treatment facilities, stormwater discharged from various sources, wastewater discharged from agriculture-related activities and other sources of wastewater related to both natural and man-made impacts which are not specifically set forth herein.

(d) The need to provide and maintain affordable and high-quality public infrastructure services and to safeguard existing industrial and agricultural sectors of the economy in the Chesapeake Bay watershed are essential to the continued economic growth and quality of life of West Virginia communities within the watershed. Protection of these communities' economic vitality and the Chesapeake Bay are critical interests of the state. The capital costs of nutrient removal processes, if borne by individual rate customers of sewer services or by individual business owners, would result in significant increases in rates for an essential public service, deferral or cancellation of other critical infrastructure extensions and/or improvements and act as a disincentive for business growth, both commercial and agricultural, in these communities, if not the shrinking of industrial and agricultural activity in the watershed. Therefore, a holistic program, while assuring the protection of the Chesapeake Bay, must include: (1) A nutrient trading and off-set program to allow for efficiencies within the watershed to assure that public moneys are placed to best use; and (2) a capital improvement program to assist those required to install capital improvements to

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obtain the reductions in nutrients previously agreed to by the state.

(e) The secretary, in consultation with affected stakeholders, is hereby directed to establish no later than June 1, 2011, a program of nutrient trading and off-sets. Pending establishment of such a program, the secretary is authorized to consider and implement interim trading and offset programs as necessary and appropriate for individual permittees in order to protect the Chesapeake Bay and its tributaries.

(f) The secretary is hereby directed, no later than June 1, 2010, and in consultation with affected stakeholders, to report to the Joint Legislative Commission on State Water Resources the status of proposed performance standards necessary for wastewater treatment facilities in the Chesapeake Bay watershed for any reduction of nutrients in the watershed required to protect water quality in the Bay.

(g) The secretary and stakeholders shall, no later than June 1, 2010, consider and recommend to the Legislature a program establishing a new and independent source of funding for capital improvements for public facilities made necessary by the imposition of nutrient removal requirements.

(h) Should it be determined based upon new information or the issuance of a final total maximum daily load for the Chesapeake Bay that modifications to nutrient loading requirements contained in West Virginia/National Pollutant Discharge Elimination System permits are necessary to be consistent with this new information or the final total maximum daily load, the secretary shall recalculate such loading requirements and modify such permits consistent with this information.

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