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SENATE BILL NO. 1235

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2005)

(Patrons Prior to Substitute—Senators Quayle and Hanger [SB 1142])

A BILL to amend and reenact §§ 10.1-2117, 10.1-2129, and 10.1-2131 of the Code of Virginia, relating to moneys for nutrient removal technology.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-2117, 10.1-2129, and 10.1-2131 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-2117. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et seq.) of this chapter.

"Individual" means any corporation, foundation, association or partnership or one or more natural persons.

"Institutions of higher education" means any educational institution meeting the requirements of § 60.2-220.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

"Municipal sewage system" means a publicly owned sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage disposal system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation.

"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.

"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.

"Reasonable sewer cost" means the amount expended per household for sewer service in relation to the median household income of the service area as determined by guidelines developed and approved by the State Water Control Board for use with the Virginia Water Facilities Revolving Fund established pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.

"Significant discharger" means (i) a municipal plant located in the Chesapeake Bay watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a municipal plant located east of the fall line with a design capacity of 0.1 million gallons per day or greater, or (iii) a planned or newly expanding municipal plant, expected to be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater.

"State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L total nitrogen concentration and at least a 0.3 mg/L total phosphorus concentration in effluent discharges.

"State waters" means all waters on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdictions.

"Water Quality Improvement Grants" means grants available from the Fund for projects of local governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in tributary plans developed pursuant to §§ 2.2-218 through 2.2-220 or (ii) to achieve other water quality restoration, protection or enhancement benefits.

§ 10.1-2129. Agency coordination; conditions of grants.

A. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester and the Directors of the Departments of Environmental Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance Department, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board, shall annually, following a public comment

60 period of at least ~~thirty~~ 30 days' duration and a public hearing, ~~allocate~~ distribute those moneys in the
61 Fund as provided from (i) the 10 percent of the annual general fund revenue collections that are in
62 excess of the official estimates in the general appropriation act, and (ii) the 10 percent of any
63 unreserved general fund balance at the close of each fiscal year whose reappropriation is not required
64 in the general appropriation act, pursuant to § 10.1-2128, for point and nonpoint source pollution. The
65 distribution shall be divided between point and nonpoint source pollution, both of which shall receive
66 allocations each year in the following manner:

67 1. Seventy percent of the moneys shall be administered by the Department of Conservation and
68 Recreation for nonpoint source programs to reduce nitrogen and phosphorus pollution, with a priority
69 for agricultural lands; and

70 2. Thirty percent of the moneys shall be administered by the Department of Environmental Quality
71 for designing and installing state-of-the-art nutrient removal technologies for municipal sewage systems
72 designated by the Department as significant dischargers.

73 B 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural
74 Resources, in consultation with the *Secretary of Agriculture and Forestry*, the State Forester and the
75 Directors of the Departments of Environmental Quality and Conservation and Recreation and of the
76 Chesapeake Bay Local Assistance Department, and with the advice and guidance of the Board of
77 Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water Control
78 Board, and the Chesapeake Bay Local Assistance Board, shall develop written guidelines that (i) specify
79 eligibility requirements; (ii) govern the application for and the distribution and conditions of Water
80 Quality Improvement Grants; and (iii) list criteria for prioritizing funding requests.

81 2. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other
82 factors as may be appropriate to most effectively restore, protect and improve the quality of state waters:
83 (i) specific practices and programs proposed in any tributary plan required by §§ 2.2-218 through
84 2.2-220, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality
85 impairment or degradation caused by different types of nutrients released in different locations from
86 different sources; and (iii) environmental benchmarks and indicators for achieving improved water
87 quality. The process for development of guidelines pursuant to this subsection shall, at a minimum,
88 include ~~(i)(a)~~ use of an advisory committee composed of interested parties; ~~(ii)(b)~~ a ~~sixty~~ 60-day public
89 comment period on draft guidelines; ~~(iii)(c)~~ written responses to all comments received; and ~~(iv)(d)~~
90 notice of the availability of draft guidelines and final guidelines to all who request such notice.

91 3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve
92 the quality of state waters, the criteria for prioritizing funding requests shall include: (i) whether the
93 location of the water quality restoration, protection or improvement project or program is within a
94 watershed or subwatershed with documented water nutrient loading problems or adopted nutrient
95 reduction goals; (ii) documented water quality impairment; and (iii) the achievement of greater water
96 quality improvements than that required by state or federal law; and (iv) the availability of other funding
97 mechanisms. In the event of a local government grant application request for greater than fifty percent
98 funding for any single project exceeding the authorized grant amount outlined in subsection F of
99 § 10.1-2131, the Directors and the Secretary shall consider the comparative revenue capacity, revenue
100 efforts and fiscal stress as reported by the Commission on Local Government. The development or
101 implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be
102 given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys
103 allocated to nonpoint source pollution.

104 § 10.1-2131. Point source pollution funding; conditions for approval.

105 A. The Department of Environmental Quality shall be the lead state agency for determining the
106 appropriateness of any grant related to point source pollution to be made from the Fund to restore,
107 protect or improve state water quality.

108 B. The Director of the Department of Environmental Quality shall, subject to available funds and in
109 coordination with the Director of the Department of Conservation and Recreation, direct the State
110 Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established
111 pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the
112 full funding of executed grant agreements.

113 C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of
114 Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other
115 than financing at least fifty percent of the cost of design and installation of biological nutrient removal
116 facilities or other nutrient removal technology at publicly owned treatment works until such time as all
117 tributary plans required by §§ 2.2-218 through 2.2-220 are developed and implemented unless he finds
118 that there exists in the Fund sufficient funds for substantial and continuing progress in implementation
119 of the tributary plans. In addition to the provisions of § 10.1-2130, all grant agreements related to
120 nutrients shall include: (i) numerical concentrations on nutrient discharges to state waters designed to
121 achieve the nutrient reduction goals of the applicable tributary plan; (ii) enforceable provisions related to

the maintenance of the numerical concentrations that will allow for exceedences of no more than ~~ten~~ 10 percent and for exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing biological nutrient removal facilities or other nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. ~~At least fifty percent of the~~ The cost of the design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of the tributary plans, the Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.

D. Notwithstanding the priority provisions of § 10.1-2129, on July 15, 2005, the Comptroller shall deposit \$50 million from the general fund into the Fund. These moneys shall be used solely to finance the costs of design and installation of biological nutrient removal facilities or other nutrient removal technology at municipal sewage systems designated by the Department of Environmental Quality as significant dischargers. The distribution of financial assistance shall be based upon the amount of total nitrogen contained in the affected municipal sewage system's effluent in excess of eight milligrams per liter or total phosphorus in excess of one milligram per liter.

E. The grant percentage for financing the costs of the design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works shall be based upon the financial need of the community as determined by comparing the annual sewer charges expended within the service area to the reasonable sewer cost established for the community.

F. Grants shall be awarded in the following manner:

1. In communities for which the ratio of annual sewer charges to reasonable sewer cost does not exceed 0.3, the Director of the Department of Environmental Quality shall authorize grants in an amount not to exceed 10 percent of the costs of the design and installation of biological nutrient removal facilities or other nutrient removal technology;

2. In communities for which the ratio is between 0.3 and 0.49, the Director shall authorize grants in an amount not to exceed 25 percent of the costs of the design and installation of biological nutrient removal facilities or other nutrient removal technology;

3. In communities for which the ratio is between 0.5 and 0.79, the Director shall authorize grants in an amount not to exceed 50 percent of the costs of the design and installation of biological nutrient removal facilities or other nutrient removal technology; and

4. In communities for which the ratio exceeds 0.8, the Director shall authorize grants in an amount not to exceed 75 percent of the costs of the design and installation of biological nutrient removal facilities or other nutrient removal technology.

2. That the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance shall by January 15, 2006, develop recommendations for a permanent source of funding for the design and installation of biological nutrient removal facilities or other nutrient removal technology at municipal sewage systems designated by the Department of Environmental Quality as significant dischargers.