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SENATE BILL NO. 626

Offered January 16, 2006

A BILL to amend and reenact §§ 2.2-1514, 10.1-2128, 10.1-2129, and 10.1-2133 of the Code of Virginia and to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 and 58.1-646, and by adding in Chapter 8 of Title 58.1 a section numbered 58.1-818, relating to providing funding for water quality in the Commonwealth.

Patrons—Quayle, Blevins and Wampler

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1514, 10.1-2128, 10.1-2129, and 10.1-2133 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 and 58.1-646, and by adding in Chapter 8 of Title 58.1 a section numbered 58.1-818 as follows:

§ 2.2-1514. Designation of general fund for nonrecurring expenditures.

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1503.2, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act.

B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to § 2.2-813 an amount for nonrecurring expenditures, which shall equal the remaining amount of the general fund balance that is not otherwise reserved or designated. No such designation shall be made unless the full amounts required for other reserves or designations including, but not limited to, (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit of general fund revenue collections in excess of official estimates and the deposit of unreserved general fund balances, pursuant to § 10.1-2128, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public institutions of higher education pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005 are set aside. The Comptroller shall set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § 2.2-5005 and for all fiscal years thereafter.

C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for nonrecurring expenditures equal to the amount designated by the Comptroller for such purpose pursuant to the provisions of subsection B of this section.

§ 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which shall include, unless otherwise provided in the general appropriation act, 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act and 10 percent of any unreserved general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act. The Fund shall also consist of the revenues described in subsection C of § 58.1-645 and § 58.1-818 and such other sums as may be made available to it from any other source, public or private, and shall include any penalties or damages collected under this article, federal grants solicited and received for the specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality Improvement Grants. Expenditures and

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59 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
60 Comptroller upon the written request of the Director of the Department of Environmental Quality or the
61 Director of the Department of Conservation and Recreation as provided in this chapter.

62 B. The purpose of the Fund is to provide Water Quality Improvement Grants to local governments,
63 soil and water conservation districts, institutions of higher education and individuals for point and
64 nonpoint source pollution prevention, reduction and control programs and efforts undertaken in
65 accordance with the provisions of this chapter. The Fund shall not be used for agency operating
66 expenses or for purposes of replacing or otherwise reducing any general, nongeneral, or special funds
67 allocated or appropriated to any state agency; however, nothing in this section shall be construed to
68 prevent the award of a Water Quality Improvement Grant to a local government in connection with
69 point or nonpoint pollution prevention, reduction and control programs or efforts undertaken on land
70 owned by the Commonwealth and leased to the local government. In keeping with the purpose for
71 which the Fund is created, it shall be the policy of the General Assembly to provide annually its share
72 of financial support to qualifying applicants for grants in order to fulfill the Commonwealth's
73 responsibilities under Article XI of the Constitution of Virginia.

74 C. For the fiscal year beginning July 1, 2005, \$50 million shall be appropriated from the general
75 fund and deposited into the Fund. This appropriation and any amounts appropriated to the Fund in
76 subsequent years in addition to any amounts deposited to the Fund pursuant to the provisions of
77 subsection A of § 10.1-2128 shall be used solely to finance the costs of design and installation of
78 biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment
79 works designated as significant dischargers for compliance with the effluent limitations for total nitrogen
80 and total phosphorus as required by the tributary strategy plans or applicable regulatory requirements.

81 At such time as grant agreements specified in § 10.1-2130 have been signed by every significant
82 discharger and available funds are sufficient to implement the provisions of such grant agreements, the
83 House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on
84 Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the
85 Senate Committee on Finance shall review the financial assistance provided under this section and
86 determine (i) whether such deposits should continue to be made, (ii) the size of the deposit to be made,
87 (iii) the programs and activities that should be financed by such deposits in the future, and (iv) whether
88 the provisions of this section should be extended.

89 § 10.1-2129. Agency coordination; conditions of grants.

90 A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in
91 addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall
92 distribute those moneys in the Fund provided from *Beginning with the 2006-2007 fiscal year, and for*
93 *each fiscal year thereafter, the moneys in the Fund provided from* the 10 percent of the annual general
94 fund revenue collections that are in excess of the official estimates in the general appropriation act, and
95 the 10 percent of any unreserved general fund balance at the close of each fiscal year whose
96 reappropriation is not required in the general appropriation act, *shall be distributed* as follows:

97 1. Seventy percent of the moneys shall be distributed to the Department of Conservation and
98 Recreation and shall be administered by it for the sole purpose of implementing projects or best
99 management practices that reduce nitrogen and phosphorus nonpoint source pollution, with a priority
100 given to agricultural best management practices. In no single year shall more than 60 percent of the
101 moneys be used for projects or practices exclusively within the Chesapeake Bay watershed; and

102 2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality,
103 which shall use such moneys for making grants for the sole purpose of designing and installing
104 state-of-the-art nutrient removal technologies for publicly owned treatment works designated as
105 significant dischargers. The moneys shall also be available for grants when the design and installation of
106 state-of-the-art nutrient removal technology utilizes the Public-Private Education Facilities and
107 Infrastructure Act (§ 56-575.1 et seq.).

108 3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not
109 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys
110 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40
111 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural Resources, in
112 consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of
113 Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and
114 Conservation and Recreation, and with the advice and guidance of the Board of Conservation and
115 Recreation, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the
116 Chesapeake Bay Local Assistance Board, and following a public comment period of at least 30 days and
117 a public hearing, shall allocate those moneys deposited in the Fund between point and nonpoint sources,
118 both of which shall receive moneys in each such year.

119 B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural
120 Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the

Commissioner of Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and Conservation and Recreation, 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 develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality Improvement Grants; and (iii) list criteria for prioritizing funding requests.

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

3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve the quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of total nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii) documented water quality impairment; and (iv) the availability of other funding mechanisms. Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of Environmental Quality may approve *In the event* a local government point source grant application request for any single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131. Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in pursuant to this chapter or when there is no stated limitation on the amount of the grant for which an application is made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

§ 10.1-2133. Annual report by State Comptroller.

The State Comptroller shall, by January 1 of each year, certify to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the total amount of annual general fund revenue collections in excess of the official estimate in the general appropriation act, the total amount of the unreserved general fund balance whose reappropriation is not required in the general appropriation act at the close of the previous fiscal year and the total amount of *estimated* funds that are to be directed to the credit of the Virginia Water Quality Improvement Fund under this article unless otherwise provided in the general appropriation act. CHAPTER 6.2. VIRGINIA LODGING FEE.

§ 58.1-645. Imposition of lodging fee.

A. There is hereby levied and imposed beginning January 1, 2008, in addition to all other taxes and fees of every kind now imposed by law, a lodging fee of \$1 per day on the sale of or charge for every room, lodging, or accommodation furnished to a transient for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license that entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

B. The lodging fee levied under this chapter shall be collected by the Tax Commissioner in the same manner as is the retail sales and use tax, pursuant to Chapter 6 (§ 58.1-600 et seq.).

C. All revenues generated by the fee imposed by this chapter shall be deposited by the Comptroller into the Virginia Water Quality Improvement Fund established under § 10.1-2128.

§ 58.1-646. Provisions of Chapter 6 (§ 58.1-600 et seq.) to apply, mutatis mutandis.

Except as provided in this chapter, and except for the vendor discount under § 58.1-622, the provisions of Chapter 6 (§ 58.1-600 et seq.) shall apply to this chapter, mutatis mutandis.

§ 58.1-818. Deposit of recordation tax revenues.

Beginning with the 2006-2007 fiscal year, and for every fiscal year thereafter, \$40 million of the

182 *taxes imposed under §§ 58.1-801 through 58.1-809 that are actually paid into the state treasury in the*
183 *fiscal year shall be deposited by the Comptroller into the Virginia Water Quality Improvement Fund*
184 *established under § 10.1-2128. The annual \$40 million transfer shall be deposited by the Comptroller*
185 *after allocations have been made for the required deposits and distributions under §§ 58.1-815 and*
186 *58.1-816. In no case, however, shall such deposit be made later than February 15 of each fiscal year.*