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SENATE BILL NO. 1301

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 19, 2007)

(Patron Prior to Substitute— Senator Newman)

A *BILL to amend and reenact § 10.1-2129 of the Code of Virginia, relating to the Water Quality Improvement Fund; grants.*

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2129 of the Code of Virginia is amended and reenacted as follows:

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

A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act, and the 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, as follows:

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

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

3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural 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, and following a public comment period of at least 30 days and a public hearing, shall allocate those moneys deposited in the Fund between point and nonpoint sources, both of which shall receive moneys in each such year.

B. 1. 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, 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

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60 water quality restoration, protection or improvement project or program is within a watershed or
61 subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii)
62 documented water quality impairment; and (iv) the availability of other funding mechanisms.
63 Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of
64 Environmental Quality may approve a local government point source grant application request for any
65 single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131.
66 Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in
67 this chapter or when there is no stated limitation on the amount of the grant for which an application is
68 made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts
69 and fiscal stress as reported by the Commission on Local Government. The development or
70 implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be
71 given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys
72 allocated to nonpoint source pollution.

73 *C. From July 1, 2007, until July 1, 2017, if deposits are made to the Virginia Water Quality*
74 *Improvement Fund pursuant to § 10.1-2128, then when less than 70 percent of such deposit is*
75 *distributed for the control of nonpoint source pollution, up to one-third of that amount should be*
76 *provided by the Director of the Department of Conservation and Recreation to the Combined Sewer*
77 *Overflow Matching Fund established in § 62.1-241.12 for use by the Cities of Lynchburg and Richmond*
78 *for the completion of their combined sewer overflow projects. When 70 percent of any deposit to the*
79 *Water Quality Improvement Fund pursuant to § 10.1-2128 is distributed for the control of nonpoint*
80 *source pollution, then up to one-half of that amount should be provided by the Director of the*
81 *Department of Conservation and Recreation to the Combined Sewer Overflow Matching Fund*
82 *established in § 62.1-241.12 for use by the Cities of Lynchburg and Richmond for the completion of*
83 *their combined sewer overflow projects. During the period of time provided for in this section, the*
84 *aggregate amount of any transfer to the Combined Sewer Overflow matching Fund established in*
85 *§ 62.1-241.12 for use by each city shall not exceed \$35,000,000. In any fiscal year in which no deposit*
86 *is made to the Water Quality Improvement Fund pursuant to § 10.1-2128, then the Governor should*
87 *recommend in any budget bill he submits pursuant to § 2.2-1509 the deposit of \$5,000,000 to the*
88 *Combined Sewer Overflow Matching Fund to be used equally by the cities of Lynchburg and Richmond*
89 *for the completion of their combined sewer overflow projects.*