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SENATE BILL NO. 511

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 7, 2008)

(Patron Prior to Substitute—Senator Whipple)

A *BILL to amend and reenact §§ 2.2-1514, as it is currently effective and as it may become effective, 10.1-2128, 10.1-2129, 10.1-2132, and 10.1-2134 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-2128.1, relating to natural resources funding.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1514, as it is currently effective and as it may become effective, 10.1-2128, 10.1-2129, 10.1-2132, and 10.1-2134 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-2128.1 as follows:

§ 2.2-1514. (Contingent expiration date - see Editor's notes) 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. Such term shall not include any expenditures relating to transportation, including but not limited to transportation maintenance.

B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to § 2.2-813 as follows: one-third of the remaining amount of the general fund balance that is not otherwise reserved or designated shall be designated by the Comptroller for nonrecurring expenditures, and two-thirds shall be designated for deposit into the Transportation Trust Fund. 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 pursuant to § 10.1-2128, *but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1*, (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 and an amount for deposit into the Transportation Trust Fund equal to the amounts designated by the Comptroller for such purposes pursuant to the provisions of subsection B. Such deposit to the Transportation Trust Fund shall not preclude the appropriation of additional amounts from the general fund for transportation purposes.

§ 2.2-1514. (Contingent effective date - see Editor's notes) 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

SENATE SUBSTITUTE

SB511S1

60 Fund deposit pursuant to § 10.1-2128, *but excluding any deposits provided under the Virginia Natural*
61 *Resources Commitment Fund established under § 10.1-2128.1*, (iii) capital outlay reappropriations
62 pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the
63 general appropriation act, and (b) reappropriations of unexpended appropriations to certain public
64 institutions of higher education pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public
65 institutions of higher education pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the
66 general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of
67 certain public institutions of higher education pursuant to § 2.2-5005 are set aside. The Comptroller shall
68 set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as
69 determined under § 2.2-5005 and for all fiscal years thereafter.

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

75 § 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

76 A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be
77 known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books
78 of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which
79 shall include, unless otherwise provided in the general appropriation act, 10 percent of the annual
80 general fund revenue collections that are in excess of the official estimates in the general appropriation
81 act and 10 percent of any unreserved general fund balance at the close of each fiscal year whose
82 reappropriation is not required in the general appropriation act. The Fund shall also consist of such other
83 sums as may be made available to it from any other source, public or private, and shall include any
84 penalties or damages collected under this article, federal grants solicited and received for the specific
85 purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in
86 the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund
87 but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury
88 and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality Improvement
89 Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants
90 issued by the Comptroller upon the written request of the Director of the Department of Environmental
91 Quality or the Director of the Department of Conservation and Recreation as provided in this chapter.

92 B. ~~The~~ *Except as otherwise provided under this article*, the purpose of the Fund is to provide Water
93 Quality Improvement Grants to local governments, soil and water conservation districts, institutions of
94 higher education and individuals for point and nonpoint source pollution prevention, reduction and
95 control programs and efforts undertaken in accordance with the provisions of this chapter. The Fund
96 shall not be used for agency operating expenses or for purposes of replacing or otherwise reducing any
97 general, nongeneral, or special funds allocated or appropriated to any state agency; however, nothing in
98 this section shall be construed to prevent the award of a Water Quality Improvement Grant to a local
99 government in connection with point or nonpoint pollution prevention, reduction and control programs
100 or efforts undertaken on land owned by the Commonwealth and leased to the local government. In
101 keeping with the purpose for which the Fund is created, it shall be the policy of the General Assembly
102 to provide annually its share of financial support to qualifying applicants for grants in order to fulfill the
103 Commonwealth's responsibilities under Article XI of the Constitution of Virginia.

104 C. For the fiscal year beginning July 1, 2005, \$50 million shall be appropriated from the general
105 fund and deposited into the Fund. ~~This~~ *Except as otherwise provided under this article*, such
106 appropriation and any amounts appropriated to the Fund in subsequent years in addition to any amounts
107 deposited to the Fund pursuant to the provisions of subsection A ~~of § 10.1-2128~~ shall be used solely to
108 finance the costs of design and installation of nutrient removal technology at publicly owned treatment
109 works designated as significant dischargers or eligible nonsignificant dischargers for compliance with the
110 effluent limitations for total nitrogen and total phosphorus as required by the tributary strategy plans or
111 applicable regulatory requirements.

112 At such time as grant agreements specified in § 10.1-2130 have been signed by every significant
113 discharger and eligible nonsignificant discharger and available funds are sufficient to implement the
114 provisions of such grant agreements, the House Committee on Agriculture, Chesapeake and Natural
115 Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation
116 and Natural Resources, and the Senate Committee on Finance shall review the financial assistance
117 provided under this section and determine (i) whether such deposits should continue to be made, (ii) the
118 size of the deposit to be made, (iii) the programs and activities that should be financed by such deposits
119 in the future, and (iv) whether the provisions of this section should be extended.

120 § 10.1-2128.1. Virginia Natural Resources Commitment Fund established.

121 A. There is hereby created in the state treasury a special nonreverting fund to be known as the

Virginia Natural Resources Commitment Fund hereafter referred to as "the Subfund," which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by the Department of Conservation and Recreation. The Subfund shall be established on the books of the Comptroller. All amounts appropriated from the general fund and such other funds as may be made available to the Subfund from any other source, public or private, shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes as described in subsection B.

B. Beginning on July 1, 2008, and continuing in each subsequent fiscal year until June 30, 2018, out of such amounts as may be appropriated and deposited to the Subfund, distributions shall be made in each fiscal year for the following purposes:

1. Five percent of the total amount distributed to the Agricultural Best Management Practices Cost-Share Program shall be distributed to soil and water conservation districts to provide technical assistance for the implementation of such agricultural best management practices. Each soil and water conservation district in the Commonwealth shall receive a share according to a method employed by the Director of the Department of Conservation and Recreation in consultation with the Virginia Soil and Water Conservation Board, taking into account the percentage of the available agricultural best management practices funding to be received by the district from the Virginia Natural Resources Commitment Fund;

2. Fifty-seven percent of the total amount distributed to the Agricultural Best Management Practices Cost-Share Program shall be used for matching grants for agricultural best management practices on lands exclusively within the Chesapeake Bay watershed; and

3. Thirty-eight percent of the total amount distributed to the Agricultural Best Management Practices Cost-Share Program shall be used for matching grants for agricultural best management practices on lands outside the Chesapeake Bay watershed.

§ 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~~ Agricultural Best Management Practices Cost-Share Program pursuant to subsection B of § 10.1-2128.1 are reasonably anticipated to be 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, *but excluding any moneys deposited into the Virginia Natural Resources Commitment Fund established pursuant to § 10.1-2128.1*, 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

183 Environmental Quality and Conservation and Recreation, and with the advice and guidance of the Board
184 of Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water
185 Control Board, and the Chesapeake Bay Local Assistance Board, shall develop written guidelines that (i)
186 specify eligibility requirements; (ii) govern the application for and the distribution and conditions of
187 Water Quality Improvement Grants; and (iii) list criteria for prioritizing funding requests.

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

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

214 § 10.1-2132. Nonpoint source pollution funding; conditions for approval.

215 A. The Department of Conservation and Recreation shall be the lead state agency for determining the
216 appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore,
217 protect and improve the quality of state waters.

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

223 C. Grant funding may be made available to local governments, soil and water conservation districts,
224 institutions of higher education and individuals who propose specific initiatives that are clearly
225 demonstrated as likely to achieve reductions in nonpoint source pollution, including, but not limited to,
226 excess nutrients and suspended solids, to improve the quality of state waters. Such projects may include,
227 but are in no way limited to, the acquisition of conservation easements related to the protection of water
228 quality and stream buffers; conservation planning and design assistance to develop nutrient management
229 plans for agricultural operations; instructional education directly associated with the implementation or
230 maintenance of a specific nonpoint source pollution reduction initiative; implementation of cost-effective
231 nutrient reduction practices; and reimbursement to local governments for tax credits and other kinds of
232 authorized local tax relief that provides incentives for water quality improvement. The Director shall
233 give priority consideration to the distribution of grants from the Fund for the purposes of implementing
234 tributary strategy plans, with a priority given to agricultural practices. In no single year shall more than
235 60 percent of the moneys be used for projects or practices exclusively within the Chesapeake Bay
236 watershed.

237 D. *The Director of the Department of Conservation and Recreation shall manage the allocation of*
238 *Water Quality Improvement Grants from the Virginia Natural Resources Commitment Fund established*
239 *under § 10.1-2128.1.*

240 § 10.1-2134. Annual report by Directors of the Departments of Environmental Quality and
241 Conservation and Recreation.

242 The Directors of the Departments of Environmental Quality and Conservation and Recreation shall,
243 by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients
244 of grants made from the Virginia Water Quality Improvement Fund and the specific and measurable

245 pollution reduction achievements to state waters anticipated as a result of each grant award, together
246 with the amounts of continued funding required for the coming fiscal year under all fully executed grant
247 agreements. *The report shall provide a detailed progress update on the implementation of agricultural*
248 *best management practices to reduce nitrogen and phosphorous pollution from agricultural lands.* This
249 annual report may be incorporated as part of the report required by § 62.1-44.118.