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SENATE BILL NO. 470

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend and reenact §§ 2.2-1514, as it is currently effective and as it may become effective, 10.1-1020, 10.1-2128, 10.1-2129, 10.1-2130, 10.1-2132, 10.1-2133, 10.1-2134, and 58.1-512 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.1-18.10:01, 10.1-2128.1, and 58.1-815.5, relating to natural resources funding.*

Patron—Hanger

Referred to Committee on Agriculture, Conservation and Natural Resources

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, 10.1-1020, 10.1-2128, 10.1-2129, 10.1-2130, 10.1-2132, 10.1-2133, 10.1-2134, and 58.1-512 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.1-18.10:01, 10.1-2128.1, and 58.1-815.5 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.

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59 B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to
60 § 2.2-813 an amount for nonrecurring expenditures, which shall equal the remaining amount of the
61 general fund balance that is not otherwise reserved or designated. No such designation shall be made
62 unless the full amounts required for other reserves or designations including, but not limited to, (i) the
63 Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement
64 Fund deposit pursuant to § 10.1-2128, *but excluding any deposits provided under the Virginia Natural*
65 *Resources Commitment Fund established under § 10.1-2128.1*, (iii) capital outlay reappropriations
66 pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the
67 general appropriation act, and (b) reappropriations of unexpended appropriations to certain public
68 institutions of higher education pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public
69 institutions of higher education pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the
70 general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of
71 certain public institutions of higher education pursuant to § 2.2-5005 are set aside. The Comptroller shall
72 set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as
73 determined under § 2.2-5005 and for all fiscal years thereafter.

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

79 § 3.1-18.10:01. *Local Purchase of Development Rights Matching Grant Fund established.*

80 *There is hereby created in the state treasury a special fund to be known as the Local Purchase of*
81 *Development Rights Matching Grant Fund, hereafter referred to as "the Fund." The Fund shall be*
82 *established on the books of the Comptroller. All revenues described in subdivision B 1 of § 10.1-2128.1*
83 *and such other funds as may be made available to the Fund from any other source, public or private,*
84 *shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund*
85 *shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest*
86 *thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.*

87 *Moneys in the Fund shall be used solely for the purposes of providing grants, on a matching basis,*
88 *to local purchase of development rights programs that have been certified pursuant to this chapter.*

89 *Grants shall be distributed to local purchase of development rights programs under policies,*
90 *procedures, and guidelines developed by the Office of Farmland Preservation. However, in each fiscal*
91 *year 60 percent of the moneys deposited into the Fund shall be used for grants for local purchase of*
92 *development rights programs of counties and cities wholly or partly within the Chesapeake Bay*
93 *watershed, and 40 percent of the moneys deposited into the Fund shall be used for grants for local*
94 *purchase of development rights programs of all other counties and cities.*

95 *In general, for each \$1 received from the Fund, the local purchase of development rights program*
96 *shall be required to provide a \$1 match. However, if, as of July 1 in the fiscal year, the total "value" of*
97 *all land in a county or city, but excluding structures, upon which the real estate tax is imposed does not*
98 *exceed 70 percent of the total fair market value of all land, excluding structures, in the county or city,*
99 *then for that fiscal year the local purchase of development rights program for the county or city shall*
100 *be required to match each \$1 received from the Fund with \$0.50. For purposes herein, "value" shall*
101 *mean the fair market value of land unless the land has been valued for tax purposes pursuant to Article*
102 *4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, in which case "value" shall mean the value as*
103 *determined pursuant to such article. In addition, for purposes of this computation, the data in the most*
104 *recently published annual report of the Virginia Department of Taxation shall be used.*

105 *The match made by the local purchase of development rights programs shall not be made in*
106 *anything other than money. In addition, such match shall not be made from state or federal moneys*
107 *received by the county or city (or by the purchase of development rights programs) for agriculture,*
108 *preservation, conservation, or natural resource purposes.*

109 *The Fund shall be administered by the Coordinator of the Office of Farmland Preservation.*
110 *Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued*
111 *by the Comptroller upon written request signed by the Commissioner of Agriculture and Consumer*
112 *Services.*

113 § 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.

114 A. The Foundation shall establish, administer, manage, including the creation of reserves, and make
115 expenditures and allocations from a special, nonreverting fund in the state treasury to be known as the
116 Virginia Land Conservation Fund, hereinafter referred to as the Fund. The Foundation shall establish and
117 administer the Fund solely for the purposes of:

118 1. Acquiring fee simple title or other rights, including the purchase of development rights, to interests
119 or privileges in property for the protection or preservation of ecological, cultural or historical resources,
120 lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish

and wildlife habitat, natural areas, agricultural and forestal lands and open space; and

2. Providing grants to state agencies, including the Virginia Outdoors Foundation, and matching grants to other public bodies and holders for acquiring fee simple title or other rights, including the purchase of development rights, to interests or privileges in real property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space. The Board shall establish criteria for making grants from the Fund, including procedures for determining the amount of each grant and the required match. The criteria shall include provisions for grants to localities for purchase of development rights programs.

Interests in land acquired as provided in subdivision 1 of this subsection may be held by the Foundation or transferred to state agencies or other appropriate holders. Whenever a holder acquires any interest in land other than a fee simple interest as a result of a grant or transfer from the Foundation, such interest shall be held jointly by the holder and a public body. Whenever a holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation, a public body shall hold an open space easement in such land.

B. The Fund shall consist of general fund moneys and gifts *including but not limited to the deposits pursuant to subdivision B 2 of § 10.1-2128.1*, endowments or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public or private. Such moneys, gifts, endowments, grants or funds from other sources may be either restricted or unrestricted. For the purposes of this chapter, "restricted funds" shall mean those funds received by the Board to which specific conditions apply; "restricted funds" shall include, but not be limited to, general obligation bond moneys and conditional gifts. "Unrestricted funds" shall mean those received by the Foundation to which no specific conditions apply; "unrestricted funds" shall include, but not be limited to, moneys appropriated to the Fund by the General Assembly to which no specific conditions are attached and unconditional gifts.

C. In any year in which the Fund contains less than \$10 million in new deposits on September 1, and after an allocation for administrative expenses has been made as provided in subsection G, the remaining unrestricted funds in the Fund shall be allocated as follows:

1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

2. Seventy-five percent shall be divided equally among the following four grant uses: (i) natural area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing or wildlife watching; (iii) farmlands and forest preservation; and (iv) historic area preservation. Of the amount allocated as provided in this subdivision, at least one third shall be used to secure easements to be held or co-held by a public body.

D. In any year in which the Fund contains \$10 million or more in new deposits on September 1, and after an allocation for administrative expenses has been made as provided in subsection G, the remaining unrestricted funds in the Fund shall be allocated as follows:

1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

2. The remaining funds shall be divided equally among the following five grant uses: (i) natural area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing, or wildlife watching; (iii) farmland preservation; (iv) forestland conservation; and (v) historic area preservation.

E. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall not revert to the general fund. Interest earned on moneys received by the Fund other than bond proceeds shall remain in the Fund and be credited to it. Any funds transferred to the Open-Space Lands Preservation Trust Fund pursuant to this section and not disbursed or committed to a project by the end of the fiscal year in which the funds were transferred shall be returned to the Virginia Land Conservation Fund and shall be redistributed among the authorized grant uses during the next grant cycle.

F. A portion of the Fund, not to exceed twenty percent of the annual balance of unrestricted funds, may be used to develop properties purchased in fee simple, or through the purchase of development rights, with the assets of the Fund for public use including, but not limited to, development of trails, parking areas, infrastructure, and interpretive projects or to conduct environmental assessments or other preliminary evaluations of properties prior to the acquisition of any property interest.

G. Up to \$250,000 per year of the interest generated by the Fund may be used for the Foundation's administrative expenses, including, but not limited to, the expenses of the Board and its members, development of the Foundation's strategic plan, development and maintenance of an inventory of properties as provided in subdivision 1 b of § 10.1-1021, development of a needs assessment for future expenditures as provided in subdivision 1 c of § 10.1-1021, and fulfillment of reporting requirements.

182 All such expenditures shall be subject to approval by the Board of Trustees.

183 H. The Comptroller shall maintain the restricted funds and the unrestricted funds in separate
184 accounts.

185 I. For the purposes of this section, "public body" shall have the meaning ascribed to it in
186 § 10.1-1700, and "holder" shall have the meaning ascribed to it in § 10.1-1009.

187 § 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

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

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

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

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

232 § 10.1-2128.1. Virginia Natural Resources Commitment Fund established.

233 A. *There is hereby created in the state treasury a special nonreverting fund to be known as the*
234 *Virginia Natural Resources Commitment Fund, hereafter referred to as "the Subfund," which shall be a*
235 *subfund of the Virginia Water Quality Improvement Fund. The Subfund shall be established on the*
236 *books of the Comptroller. All revenues described in subdivision D 4 b of § 58.1-512 and § 58.1-815.5*
237 *and such other funds as may be made available to the Subfund from any other source, public or private,*
238 *shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the*
239 *Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund,*
240 *including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall*
241 *remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes as described in*
242 *subsection B.*

243 B. *For each \$1 deposited into the Subfund:*

1. \$0.17 shall be deposited into the Local Purchase of Development Rights Matching Grant Fund established under § 3.1-18.10:01 and reserved for matching grants to local purchase of development rights programs.

2. \$0.16 shall be deposited into the Virginia Land Conservation Fund pursuant to § 10.1-1020.

3. \$0.67 shall be administered by the Department of Conservation and Recreation through distributions to the Agricultural Best Management Practices Cost-Share Program for the sole purpose of implementing best management practices that reduce nitrogen and phosphorous pollution from agricultural lands. Such amount shall be distributed in accordance with the following:

a. In each fiscal year, 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 an equal share.

b. In each fiscal year, 57 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.

c. In each fiscal year, 38 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 all other lands in the Commonwealth.

C. Expenditures and disbursements from the Subfund for the Agricultural Best Management Practices Cost-Share Program shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Conservation and Recreation.

§ 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 subdivision B 3 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 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 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~~ *With the exclusion of those moneys distributed pursuant to subdivisions B 1 and B 2 of § 10.1-2128.1, whenever* a local government applies for a grant that exceeds the authorized grant amount outlined in 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.

§ 10.1-2130. General provisions related to grants from the Fund.

All Water Quality Improvement Grants shall be governed by a legally binding and enforceable grant agreement between the recipient and the granting agency. In addition to provisions providing for payment of the total amount of the grant, the agreement shall, at a minimum, also contain provisions that govern design and installation and require proper long-term operation, monitoring and maintenance of funded projects, including design and performance criteria, as well as contractual or stipulated penalties in an amount sufficient to ensure compliance with the agreement, which may include repayment with interest, for any breach of the agreement, including failure to properly operate, monitor or maintain. Grant agreements shall be made available for public review and comment for a period of no less than thirty days but no more than sixty days prior to execution. The granting agency shall cause notice of a proposed grant agreement to be given to all applicants for Water Quality Improvement Grants whose applications are then pending and to any person requesting such notice.

The provisions of this section shall not apply to those moneys distributed pursuant to subdivisions B 1 and B 2 of § 10.1-2128.1.

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

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

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

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

D. The Director of Conservation and Recreation shall manage the allocation of Water Quality Improvement Grants from the Fund, including Water Quality Improvement Grants from the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1. However, the Director shall not manage or administer those moneys distributed pursuant to subdivisions B 1 and B 2 of § 10.1-2128.1.

§ 10.1-2133. Annual report by State Comptroller.

The State Comptroller shall, by ~~January~~ *October* 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 *such other* funds that are *reasonably anticipated* to be directed to the credit of the Virginia Water Quality Improvement Fund under this article ~~unless otherwise provided in the general appropriation act, including any funds to be deposited into the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1.~~

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

The Directors of the Departments of Environmental Quality and Conservation and Recreation shall, by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients of grants made from the Virginia Water Quality Improvement Fund and the specific and measurable pollution reduction achievements to state waters anticipated as a result of each grant award, together with the amounts of continued funding required for the coming fiscal year under all fully executed grant agreements. *The report shall provide a detailed progress update on the implementation of best management practices to reduce nitrogen and phosphorous pollution from agricultural lands.* This annual report may be incorporated as part of the report required by § 62.1-44.118.

§ 58.1-512. Land preservation tax credits for individuals and corporations.

A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to 50% of the fair market value of any land or interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be 40% of the fair market value of the land or interest in land so conveyed.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions. The value of the donated interest in land that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by United States Internal Revenue Code § 170 (e). In order to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed, the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, and \$100,000 for 2002 taxable years and thereafter. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit which is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance of a fee interest in real property or the conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170 (h) of the United States Internal Revenue Code of 1986, as amended.

428 The Department of Conservation and Recreation shall compile an annual report on qualified
429 donations of less-than-fee interests accepted by any public or private conservation agency in the
430 respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the
431 House Committee on Appropriations, House Committee on Finance, and the Senate Committee on
432 Finance. Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee
433 interest, in real property by a charitable organization that (i) meets the definition of "holder" in
434 § 10.1-1009 and (ii) holds one or more conservation easements.

435 3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space
436 within, or as part of, a residential subdivision or any other type of residential or commercial
437 development; dedicated as open space in, or as part of, any real estate development plan; or dedicated
438 for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan,
439 or building permits shall not be a qualified donation under this article.

440 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made
441 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
442 § 501 (c) (3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
443 organization (i) meets the requirements of § 509 (a) (2) or (ii) meets the requirements of § 509 (a) (3)
444 and is controlled by an organization described in § 509 (a) (2).

445 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
446 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
447 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the
448 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)
449 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in
450 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is
451 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation
452 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable
453 organization.

454 D. The issuance of tax credits under this article for donations made on and after January 1, 2007,
455 shall be in accordance with procedures and deadlines established by the Department and shall be
456 administered under the following conditions:

457 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
458 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
459 application requests a credit of \$1 million or more, then a copy of the application shall also be filed
460 with the Department of Conservation and Recreation by the taxpayer. The application shall include, but
461 not be limited to:

- 462 a. A description of the conservation purpose or purposes being served by the donation;
- 463 b. The fair market value of land being donated in the absence of any easement or other restriction;
- 464 c. The public benefit derived from the donation;
- 465 d. The extent to which water quality best management practices will be implemented on the property;
- 466 and
- 467 e. Whether the property is fully or partially forested and a forest management plan is included in the
468 terms of the donation.

469 2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by
470 an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United
471 States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The
472 application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy
473 also provided to the Department of Conservation and Recreation.

474 3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless
475 the conservation value of the donation has been verified by the Director of the Department of
476 Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation
477 Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the
478 Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall
479 provide for adequate public participation, including adequate notice and opportunity to provide
480 comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt
481 of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

482 b. For purposes of determining whether a credit requires verification of the conservation value, the
483 credits allowed under this article with respect to donations of any other portion of a recorded parcel of
484 land within the preceding 11 years shall be aggregated with the credit claimed for the current donation.
485 This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a
486 qualified donation are not affiliated with the person or entity seeking credit for the current donation of a
487 different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not
488 previously made a qualified donation for any portion of the parcel and is not an immediate family
489 member of any such owners.

4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue more than the maximum allowed for the calendar year. For donations made in calendar year 2007 the maximum allowed is \$100 million. The credits shall be issued in the order that each complete application is received. If more than one application is received at the same time, the credits with respect to those applications shall be issued in the order that the conveyances were recorded in the appropriate circuit court of the Commonwealth. In the event that a credit requires verification of the conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4a shall be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period ending August 31, 2006.

If the amount of tax credits issued by the Department of Taxation at the end of the respective calendar year is less than the maximum amount allowed for that year, then the Tax Commissioner shall make a written certification to the Comptroller reporting the difference between the maximum amount of tax credits allowed for such year and the amount of tax credits actually issued by the Department in the calendar year. The certification shall be made no later than 45 days following such calendar year. In the fiscal year immediately following such calendar year, the Comptroller shall deposit from the general fund an amount equal to the amount so certified into the Virginia Natural Resources Commitment Fund established pursuant to § 10.1-2128.1. The Comptroller shall make such deposit as soon as practicable.

5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of this article.

b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer.

6. Neither the verification of conservation value by the Department of Conservation and Recreation nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit under this article.

E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the time of the qualified donation is consistent with this section and that all requirements of this article have been satisfied.

§ 58.1-815.5. Distribution of recordation tax for natural resources.

From the revenues collected in each fiscal year from the taxes imposed under this chapter and that remain (i) after the \$40 million deposit required under § 58.1-815, (ii) after the \$40 million deposit required under § 58.1-816, and (iii) exclusive of the revenues deposited by the Comptroller under §§ 58.1-815.4 and 58.1-817, the Comptroller shall deposit such remaining revenues as follows: 20 percent of such remaining revenues shall be deposited into the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1.

The Comptroller shall make the deposit required under this section into the Virginia Natural Resources Commitment Fund as soon as practicable as the revenues from the taxes imposed under this chapter are received into the state treasury.