

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 13

*An Act to amend and reenact §§ 10.1-603.18, 10.1-603.19, and 10.1-613.5 of the Code of Virginia, relating to the Dam Safety, Flood Prevention and Protection Assistance Fund.*

[H 1320]

Approved February 26, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-603.18, 10.1-603.19, and 10.1-613.5 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-603.18. Administration of the Fund.

The Authority shall administer and manage the Fund, and establish the interest rates and the repayment terms of such loans as provided in this article, in accordance with a memorandum of agreement with the Director. The Director shall, after consultation with all interested parties, develop a guidance document governing project eligibility and project priority criteria, and the Director, upon approval from the Virginia Soil and Water Conservation Board, shall direct the distribution of loans *and grants* from the Fund to local governments and private entities ~~and the distribution of grants to local governments~~. In order to carry out the administration and management of the Fund, the Authority may employ officers, employees, agents, advisers and consultants, including without limitation, attorneys, financial advisors, engineers, and other technical advisors and public accountants, and determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund reasonable costs and expenses incurred in the administration and management of the Fund and may establish and collect a reasonable fee for its management services. However, any such fee shall not exceed one-eighth of one percent of any bond par, loan or grant amount.

§ 10.1-603.19. Purposes for which Fund is to be used; Authority to set terms and conditions of loans.

A. The Director is authorized to make grants or loans to any local government for the purpose of assisting the local government in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies.

B. The Director is authorized to expend from the Fund up to \$50,000 annually for cost share with federal agencies in flood protection studies of statewide or regional significance.

C. The Director is also authorized, in order to protect public safety and welfare, to make grants or loans to local governments owning dams and to make loans to private entities for the design, repair and the safety modifications of dams identified in safety reports generated pursuant to § 10.1-607 or 10.1-609, and to make grants *to local governments and private entities for dam break analysis*, the mapping and digitization of dam break inundation zones, *and incremental damage analysis*.

D. The total amount of expenditures for grants in any fiscal year shall not exceed *50% percent of the total noninterest or income deposits made to the Fund during the previous fiscal year, together with the total amount collected in interest or income from the investment of moneys in the Fund from the previous fiscal year as determined at the beginning of the fiscal year.*

E. Any grants made from the Fund shall require a *50% percent* project match by the ~~local government~~ applicant. Any loans made from the Fund shall require a minimum of a *10% percent* project match by the applicant.

F. Except as otherwise provided in this article, money in the Fund shall be used solely to make loans or grants to local governments; or ~~loans to~~ private entities to finance or refinance the cost of a project. The local government or private entity to which loans or grants are made, the purposes of the loan or grant, the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be from the Fund, at the Director's discretion, to a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of dam or impounding structure deficiencies, as required by the Department, provided that the moneys are to be used only for the program and that the dams or impounding structures to be repaired or upgraded are owned by private entities.

G. Except as otherwise provided in this article, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between different loans and between local governments and private entities to finance or refinance the cost of a project. Each loan shall be evidenced by appropriate bonds or notes of the local government or by the appropriate debt instrument for private entities payable to the Fund. Private entities shall duly authorize an appropriate debt instrument and execute same by their authorized legal representatives. The bonds or notes shall have

been duly authorized by the local government and executed by its authorized legal representatives. The Authority may require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, covenants, conditions, and other information as it may deem necessary or convenient to further the purpose of the loan. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or private entity receiving the loan covenant to perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees, or charges;

2. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the borrower, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

4. Create and maintain other special funds as required by the Authority;

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default by the borrower in payment of the loan, including, without limitation, any of the following:

- a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein;

- b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

- c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund borrower made in connection with such combination or any part or parts thereof;

- d. The maintenance, replacement, renewal, and repair of the project; and

- e. The procurement of casualty and liability insurance;

6. Obtain a review of the accounting and internal controls from the Auditor of Public Accounts or his legally authorized representatives, as applicable. The Authority may request additional reviews at any time during the term of the loan. In addition, anyone receiving a report in accordance with § 10.1-603.23 may request an additional review as set forth in this section; and

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default, as applicable.

All local governments or private entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this article. Such contracts need not be identical among all local governments or private entities, but may be structured as determined by the Authority according to the needs of the contracting local governments or private entities and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

§ 10.1-613.5. Program administration fees; establishment of Dam Safety Administrative Fund.

A. The Board is authorized to establish and collect application fees from any applicant to be deposited into the ~~Flood Prevention and Protection Assistance Fund~~ *Dam Safety Administrative Fund* established pursuant to ~~§ 10.1-603.17 for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of dams~~ subsection B. Permit applications shall not be reviewed without a full payment of the required fee. Virginia Soil and Water Conservation Districts shall be exempt from all fees established pursuant to this section.

B. *There is hereby created in the state treasury a special nonreverting fund to be known as the Dam Safety Administrative Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of permit application fees authorized under subsection A and shall be used for the administration of the dam safety program, including actions taken in accordance with §§ 10.1-608, 10.1-609, and 10.1-613. All such funds shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and*

*be credited to it. Any moneys 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. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.*