

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 684

*An Act to amend and reenact § 2.2-1514, as it is currently effective and as it may become effective, and §§ 10.1-2128, 10.1-2129, and 10.1-2133 of the Code of Virginia, relating to the Comptroller's assignment of certain general fund balances.*

[S 607]

Approved April 12, 2010

**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, and §§ 10.1-2128, 10.1-2129, and 10.1-2133 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1514. (Contingent expiration date - see Editor's notes) Assignment 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 § 2.2-1518, 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~~ *assign* 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 restricted, committed, or assigned for other usage within the general fund~~ shall be ~~designated~~ *assigned* by the Comptroller for nonrecurring expenditures, and two-thirds shall be ~~designated~~ *assigned* for deposit into the Transportation Trust Fund. No such ~~designation~~ *assignment* shall be made unless the full amounts required for other ~~reserves or designations restrictions, commitments, or assignments~~ 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~~ *assigned* 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) Assignment 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 § 2.2-1518, 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~~ *assign* 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 restricted, committed, or assigned for other usage within the general fund~~. No such ~~designation~~ *assignment* shall be made unless the full amounts required for other ~~reserves or designations restrictions, commitments, or assignments~~

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 equal to the amount ~~designated~~ *assigned* by the Comptroller for such purpose pursuant to the provisions of subsection B of this section.

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

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

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

C. For the fiscal year beginning July 1, 2005, \$50 million shall be appropriated from the general fund and deposited into the Fund. Except as otherwise provided under this article, such appropriation and any amounts appropriated to the Fund in subsequent years in addition to any amounts deposited to the Fund pursuant to the provisions of subsection A shall be used solely to finance the costs of design and installation of nutrient removal technology at publicly owned treatment works designated as significant dischargers or eligible nonsignificant dischargers for compliance with the effluent limitations for total nitrogen and total phosphorus as required by the tributary strategy plans or applicable regulatory requirements. Notwithstanding the provisions of this section, the Governor and General Assembly may, at any time, provide additional funding for nonpoint source pollution reduction activities through the Fund in excess of the deposit required under subsection A.

At such time as grant agreements specified in § 10.1-2130 have been signed by every significant discharger and eligible nonsignificant discharger and available funds are sufficient to implement the provisions of such grant agreements, the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance shall review the financial assistance provided under this section and determine (i) whether such deposits should continue to be made, (ii) the

size of the deposit to be made, (iii) the programs and activities that should be financed by such deposits in the future, and (iv) whether the provisions of this section should be extended.

§ 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~~ *unrestricted and uncommitted* 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, 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 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.

§ 10.1-2133. Annual report by State Comptroller.

The State Comptroller shall, by January 1 of each year, certify to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the total amount of annual general fund revenue collections in excess of the official estimate in the general appropriation act, the total amount of the ~~unreserved~~ *unrestricted and uncommitted* 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 funds that are to be directed to the credit of the Virginia Water Quality Improvement Fund under this article unless otherwise provided in the general appropriation act.