

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section*  
3 *numbered 10.1-104.5, relating to authorizing the Department of Conservation and Recreation to*  
4 *establish supplemental environmental projects.*

5 [H 2368]

6 Approved

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

8 **1. That the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 10.1 a**  
9 **section numbered 10.1-104.5 as follows:**

10 *§ 10.1-104.5. Supplemental environmental projects.*

11 *A. As used in this section:*

12 *"Supplemental environmental project" means an environmentally beneficial project undertaken as*  
13 *partial settlement of a civil enforcement action and not otherwise required by law.*

14 *B. The Virginia Soil and Water Conservation Board or the Director acting on behalf of the Board or*  
15 *under his own authority in issuing any administrative order, or any court of competent jurisdiction as*  
16 *provided for under this Code, may, in its or his discretion and with the consent of the person subject to*  
17 *the order, provide for such person to undertake one or more supplemental environmental projects. The*  
18 *project shall have a reasonable geographic nexus to the violation or, if no such project is available,*  
19 *shall advance at least one of the declared objectives of the environmental law or regulation that is the*  
20 *basis of the enforcement action. Performance of such projects shall be enforceable in the same manner*  
21 *as any other provision of the order.*

22 *C. The following categories of projects may qualify as supplemental environmental projects, provided*  
23 *the project otherwise meets the requirements of this section: public health, pollution prevention,*  
24 *pollution reduction, environmental restoration and protection, environmental compliance promotion, and*  
25 *emergency planning and preparedness. In determining the appropriateness and value of a supplemental*  
26 *environmental project, the following factors shall be considered by the enforcement authority: net*  
27 *project costs, benefits to the public or the environment, innovation, impact on minority or low income*  
28 *populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental*  
29 *environmental project that are funded by state or federal low-interest loans, contracts or grants shall be*  
30 *deducted from the net project cost in evaluating the project. In each case in which a supplemental*  
31 *environmental project is included as part of a settlement, an explanation of the project with any*  
32 *appropriate supporting documentation shall be included as part of the case file.*

33 *D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant*  
34 *to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

35 *E. Any decision whether or not to agree to a supplemental environmental project is within the sole*  
36 *discretion of the Virginia Soil and Water Conservation Board, Director, or court and shall not be*  
37 *subject to appeal.*

38 *F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable*  
39 *federal law or any applicable requirement for the Commonwealth to obtain or maintain federal*  
40 *delegation or approval of any regulatory program.*