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SENATE BILL NO. 404**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 7, 2012)

(Patron Prior to Substitute—Senator Hanger)

A *BILL to amend and reenact § 58.1-339.10 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 10.1 an article numbered 14, consisting of sections numbered 10.1-1181.13 and 10.1-1181.14, relating to riparian forest buffers.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-339.10 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 10.1 an article numbered 14, consisting of sections numbered 10.1-1181.13 and 10.1-1181.14, as follows:

*Article 14.**Riparian Forest Grant Program.**§ 10.1-1181.13. Riparian Forest Grant Fund.*

From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Riparian Forest Grant Fund (the Fund), to be administered by the State Forester. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be made by the State Treasurer on warrants issued by the Comptroller upon the written request bearing the signature of the State Forester. Grants from the Fund shall only be made to applications to the Riparian Forest Grant Program pursuant to § 10.1-1181.14.

§ 10.1-1181.14. Riparian Forest Grant Program.

A. As used in this section, unless the context requires a different meaning:

"Fund" means the Riparian Forest Grant Fund established pursuant to § 10.1-1181.13.

"Grant" means a grant issued pursuant to the Riparian Forest Grant Program.

"Individual" means an individual person and an individual's grantor trust.

"Waterway" means any perennial or intermittent stream of water depicted on the most current United States Geological Survey topographical map.

B. Beginning January 1, 2013, any individual who owns land abutting a waterway on which timber is harvested, and who forbears harvesting timber on certain portions of the land near the waterway, shall be eligible to apply for a grant from the Fund.

C. The State Forester shall develop guidelines setting forth the general requirements of qualifying for a grant, including the land that is eligible. To qualify for a grant, the individual shall comply with an individualized Forest Stewardship Plan to be certified by the State Forester. In no event shall the distance from the waterway to the far end of the timber buffer, on which the grant is based, be less than 35 feet or more than 300 feet. The minimum duration for the buffer shall be 15 years. The State Forester shall check each certified buffer annually to verify its continued compliance with the individual's Forest Stewardship Plan. If the State Forester discovers that the timber on the portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such violation shall be delivered to the individual by the State Forester.

D. The grant shall be an amount equal to 25 percent of the value of timber in that portion of the land retained as a buffer in the year that the timber outside the buffer was harvested, or \$17,500, whichever is less.

E. The land upon which a grant is based cannot again be the subject of a grant for at least 15 years. No land that is the subject of a tax credit issued pursuant to § 58.1-339.10 on or after January 1, 2000, but before January 1, 2013, shall be eligible for a grant pursuant to this article for at least 15 years after the credit was issued.

F. An individual shall apply to the State Forester for a grant for eligible land. The State Forester shall determine the amount of the grant, using the assessed value of the timber in that portion of land retained as a buffer. Grants shall be issued in the order that each completed eligible application is received. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

G. In the event that the timber in that portion of land retained as a buffer is harvested by the individual or any other person prior to the end of the term originally established in the individual's Forest Stewardship Plan, the individual shall repay the grant awarded. Within 60 days after receiving

written notification from the State Forester that the individual's plan no longer qualifies for the grant, repayment shall be made to the Department of Forestry, and shall be deposited into the Fund. If repayment is not made within the 60-day period, the State Forester shall notify the locality's attorney for the Commonwealth for assistance in collecting the funds from the individual.

§ 58.1-339.10. Riparian forest buffer protection for waterways tax credit.

A. For all taxable years beginning on or after January 1, 2000, *but before January 1, 2013*, any individual who owns land abutting a waterway on which timber is harvested, and who forbears harvesting timber on certain portions of the land near the waterway, shall be allowed a credit against the tax imposed by § 58.1-320 as set forth in this section. For purposes of this section, "waterway" means any perennial or intermittent stream of water depicted on the then most current United States Geological Survey topographical map. For purposes of this section and for taxable years beginning on and after January 1, 2008, "individual" means an individual person and an individual's grantor trust.

B. The State Forester shall develop guidelines setting forth the general requirements of qualifying for the credit, including the land for which credit is eligible. To qualify for the credit, the individual must comply with an individualized Forest Stewardship Plan to be certified by the State Forester. In no event shall the distance from such waterway to the far end of the timber buffer, on which the tax credit is based, be less than ~~thirty-five~~ 35 feet or more than ~~three hundred~~ 300 feet. The minimum duration for the buffer shall be ~~fifteen~~ 15 years. The State Forester shall check each certified buffer annually to verify its continued compliance with the individual's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such violation shall be delivered to the individual by the State Forester.

C. The tax credit shall be an amount equal to ~~twenty-five~~ 25 percent of the value of timber in that portion of the land retained as a buffer. The amount of such credit shall not exceed \$17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year that the timber outside the buffer was harvested. If the amount of the credit exceeds the individual's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken. For purposes of this section, the amount of any credit attributable to qualified buffer protection by a partnership or electing small business corporation (S Corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S Corporation. The land which is the subject of a tax credit under this section cannot again be the subject of a tax credit under this section for at least ~~fifteen~~ 15 years. The State Forester shall check each certified buffer annually to verify its continued compliance with the individual's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such noncompliance shall be delivered to the individual by the State Forester.

D. To claim the credit authorized under this section, the individual shall apply to the State Forester, who shall determine the amount of credit, using the assessed value of the timber in that portion of land retained as a buffer, and issue a certificate thereof to the individual. The individual shall attach the certificate to the Virginia tax return on which the credit is claimed. In the event the timber in that portion of land retained as a buffer is harvested by the individual or any other person prior to the end of the term originally established in the individual's Forest Stewardship Plan, the individual shall repay the tax credit claimed. Within ~~sixty~~ 60 days after receiving written notification from the State Forester that the individual's plan no longer qualifies for the credit, repayment shall be made to the Department of Taxation. If repayment is not made within the ~~sixty-day~~ 60-day period, the State Forester shall notify the locality's attorney for the Commonwealth ~~Attorney~~ for assistance in collecting the funds from the individual.

2. That the provisions of this act, including the expiration of the tax credit authorized pursuant to § 58.1-339.10 of the Code of Virginia, shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in a general appropriation act passed by the 2012 Session of the General Assembly, which becomes law.