

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 540

An Act to amend and reenact § 10.1-2128.2 of the Code of Virginia, relating to the Nutrient Offset Fund; sale of credits.

[H 2311]

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2128.2 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-2128.2. Nutrient Offset Fund; purposes.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Nutrient Offset Fund, ~~hereafter~~ referred to *in this section* as "the Subfund," which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by the Director of the Department of Environmental Quality. The Subfund shall be established on the books of the Comptroller. All amounts appropriated and such other moneys as may be made available to the Subfund from any other source, public or private, shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes stated in subsection B. Expenditures and disbursements from the Subfund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Director of the Department of Environmental Quality.

B. The Director of the Department of Environmental Quality shall use moneys in the Subfund only to ~~purchase~~ *acquire* nutrient ~~offsets~~ *credits or allocations from point or nonpoint sources* that achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law *or the Watershed Implementation Plan prepared for the Chesapeake Bay Total Maximum Daily Load pursuant to § 2.2-218*. The Director of the Department of Environmental Quality may enter into long-term contracts with producers of nutrient ~~offsets~~ *credits* to purchase such ~~offsets~~ *credits* using moneys from the Subfund. ~~Priority shall be given to nutrient offsets produced from facilities that generate electricity from animal waste. Credits in the Subfund shall be listed in a registry maintained by the Department of Environmental Quality.~~

C. *The Department of Environmental Quality shall establish a procedure to govern the distribution of moneys from the Subfund that shall include criteria that address (i) the annualized cost per pound of the reduction, (ii) the reliability of the underlying technology or practice, (iii) the relative durability and permanence of the credits generated, and (iv) other such factors that the Department deems appropriate to ensure that the practices will achieve the necessary reduction in nutrients for the term of credit.*

D. The Director of the Department of Environmental Quality shall make nutrient ~~offsets~~ *credits* ~~purchased~~ *acquired* pursuant to subsection B available for sale to owners or operators of new or expanded facilities pursuant to § 62.1-44.19:15, and to permitted facilities pursuant to § 62.1-44.19:18. *The Director shall consider recommendations of the Secretary of Commerce and Trade consistent with the requirements of the State Water Control Law (§ 62.1-44.2 et seq.) in the sale of nutrient credits to new or expanding private facilities.*

~~D.~~ E. For the purposes of this section, a "nutrient ~~offset~~ *credit*" means a nutrient reduction certified by the Department of Environmental Quality as a load allocation, point *or nonpoint* source nitrogen credit, or point *or nonpoint* source phosphorus credit under the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.).