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HOUSE BILL NO. 1822

Offered January 9, 2019

Prefiled January 1, 2019

A BILL to amend and reenact § 10.1-2131 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 21.1 of Title 10.1 sections numbered 10.1-2127.1 and 10.1-2134.1 and by adding a section numbered 62.1-44.15:29.2, relating to Water Quality Improvement Grant; point source pollution; Stormwater Local Assistance Fund.

Patrons—Bulova, Turpin, Carr and Lopez

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2131 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 21.1 of Title 10.1 sections numbered 10.1-2127.1 and 10.1-2134.1 and by adding a section numbered 62.1-44.15:29.2 as follows:

§ 10.1-2127.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Fund" means the Virginia Water Quality Improvement Fund established by § 10.1-2128.

§ 10.1-2131. Point source pollution funding; conditions for approval.

A. The Department of Environmental Quality (the Department) shall be the lead state agency for determining the appropriateness of any grant related to point source pollution to be made from the Fund to restore, protect, or improve state water quality.

B. The Director of the Department of Environmental Quality (the Director) shall, subject to available funds and in coordination with the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director of the Department of Environmental Quality shall enter into grant agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions that payments thereunder are subject to the availability of funds.

C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works in the Chesapeake Bay watershed until such time as nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan are satisfied, unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the reductions established in accordance with regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan within the Chesapeake Bay watershed.

In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedances of 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedances of 0.1 mg/L for total phosphorus or no more than 10%, and for exceedances caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking, and revolving loan distribution criteria.

If, pursuant to § 10.1-1187.6, the State Water Control Board approves an alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject to the terms of such approval. The cost of the design and installation of nutrient removal technology at publicly owned treatment works meeting the nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided if the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of any applicable regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan, the Director may authorize disbursements from the Fund for any water quality restoration, protection, and improvements related to point source pollution that are

INTRODUCED

HB1822

59 clearly demonstrated as likely to achieve measurable and specific water quality improvements, including  
60 cost effective technologies to reduce loads of total phosphorus, total nitrogen, or nitrogen-containing  
61 ammonia in order to meet the requirements of regulations associated with the reduction of ammonia that  
62 have not yet been adopted and that are more stringent than regulations adopted by the State Water  
63 Control Board as of January 1, 2018. Notwithstanding the previous provisions any provision of this  
64 subsection, the Director may, at any time, authorize grants, including grants to institutions of higher  
65 education, for technical assistance related to nutrient reduction.

66 *Notwithstanding any other provision of this chapter, the Director may at any time authorize grants  
67 for the design and installation of wastewater conveyance infrastructure that (a) diverts wastewater from  
68 one publicly owned treatment works that is eligible for grant funding under this chapter to another  
69 publicly owned treatment works that also is eligible for such funding and (b) results in a Water Quality  
70 Improvement Grant expense being incurred by the Department that is the same as or lower than the  
71 grant expense the Department would incur in funding design and installation of eligible nutrient removal  
72 or other applicable treatment technology at such treatment works that would have treated the  
73 wastewater in the absence of the diversion project.*

74 D. The grant percentage provided for financing the costs of the design and installation of nutrient  
75 removal technology at publicly owned treatment works shall be based upon the financial need of the  
76 community as determined by comparing the annual sewer charges expended within the service area to  
77 the reasonable sewer cost established for the community.

78 E. Grants shall be awarded in the following manner:

79 1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than  
80 0.30, the Director of the Department of Environmental Quality shall authorize grants in the amount of  
81 35 percent of the costs of the design and installation of nutrient removal technology;

82 2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
83 greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of  
84 the costs of the design and installation of nutrient removal technology;

85 3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
86 greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of  
87 the costs of design and installation of nutrient removal technology; and

88 4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or  
89 greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the  
90 design and installation of nutrient removal technology.

91 **§ 10.1-2134.1. Water Quality Improvement Fund; estimate of requests.**

92 *The Department of Environmental Quality (the Department), in consultation with stakeholders,  
93 including representatives of the Virginia Association of Municipal Wastewater Agencies, local  
94 governments, and conservation organizations, shall annually determine an estimate of the amount of  
95 Water Quality Improvement Grant funding expected to be requested by local governments for projects  
96 that are related to point source pollution and are eligible for grant funding pursuant to the provisions  
97 of this chapter. The Department shall include such estimate in (i) the biennial funding report that is  
98 submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report  
99 on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the  
100 provisions of § 62.1-44.118.*

101 **§ 62.1-44.15:29.2. Stormwater Local Assistance Fund, estimate of requests.**

102 *The Department, in consultation with stakeholders, including representatives of the Virginia  
103 Municipal Stormwater Association, local governments, and conservation organizations, shall annually  
104 determine an estimate of the amount of stormwater local assistance matching grants expected to be  
105 requested by local governments for projects that are related to planning, designing, and implementing  
106 stormwater best management practices and are eligible for funding. The Department shall include such  
107 estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions  
108 of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted  
109 to legislative committees pursuant to the provisions of § 62.1-44.118.*