

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 21

An Act to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 21.1, containing articles numbered 1 through 4, consisting of sections numbered 10.1-2117 through 10.1-2134, relating to the Virginia Water Quality Improvement Act of 1997.

[H 2330]

Approved February 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 21.1, containing articles numbered 1 through 4, consisting of sections numbered 10.1-2117 through 10.1-2134, as follows:

CHAPTER 21.1.

VIRGINIA WATER QUALITY IMPROVEMENT ACT OF 1997.

Article 1.

General Provisions.

§ 10.1-2117. Definitions.

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

"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et seq.) of this chapter.

"Individual" means any corporation, foundation, association or partnership or one or more natural persons.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.

"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.

"State waters" means all waters on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdictions.

"Water Quality Improvement Grants" means grants available from the Fund for projects of local governments and individuals (i) to achieve nutrient reduction goals in tributary plans developed pursuant to Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1 or (ii) to achieve other water quality restoration, protection or enhancement benefits.

§ 10.1-2118. Cooperative program established.

It shall be the policy of the Commonwealth, and it is the purpose of this chapter, to restore and improve the quality of state waters and to protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth. The General Assembly further determines and finds that the quality of state waters is subject to potential pollution and degradation, including excess nutrients, from both point and nonpoint source pollution and that the purposes of the State Water Control Law (§ 62.1-44.2 et seq.) and all other laws related to the restoration, protection and improvement of the quality of state waters will be enhanced by the implementation of the provisions of this chapter. The General Assembly further determines and finds that the restoration, protection and improvement of the quality of state waters is a shared responsibility among state and local governments and individuals and to that end this chapter establishes cooperative programs related to nutrient reduction and other point and nonpoint sources of pollution.

§ 10.1-2119. Effect of chapter on other governmental authority.

The authorities and powers granted by the provisions of this chapter are supplemental to other state and local governmental authority and do not limit in any way other water quality restoration, protection and enhancement authority of any agency or local government of the Commonwealth. All counties, cities and towns are authorized to exercise their police powers and zoning powers to protect the quality of state waters from nonpoint source pollution as provided in this Code.

Article 2.

Cooperative Point Source Pollution Program.

§ 10.1-2120. Definitions.

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

§ 10.1-2121. Cooperative point source pollution program.

In order to restore, protect and improve the quality of the bays, lakes, rivers, streams, creeks, and

other state waters, and to achieve the pollution reduction goals, including those related to nutrient reduction, established in commitments made by the Commonwealth to water quality restoration, protection and improvement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments and individuals in the control of point source pollution, including nutrient reductions, through technical and financial assistance made available through grants provided from the Fund. In providing this technical and financial assistance the Department shall give initial priority to local government capital construction projects designed to achieve nutrient reduction goals, as provided in § 10.1-2131, consistent with those established in the Chesapeake Bay Agreement, as amended, and thereafter to efforts consistent with other commitments made by the Commonwealth. In pursuing implementation of this cooperative program, it is the intent of the Commonwealth to annually seek and provide funding necessary to meet its commitments under any fully executed grant agreement pursuant to the provisions of §§ 10.1-2130 and 10.1-2131.

§ 10.1-2122. Additional powers and duties of the Director.

In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

Article 3.

Cooperative Nonpoint Source Pollution Program.

§ 10.1-2123. Definitions.

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

"Board" means the Board of Conservation and Recreation.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

§ 10.1-2124. Cooperative nonpoint source pollution program.

A. The state has the responsibility under Article XI of the Constitution of Virginia to protect the bays, lakes, rivers, streams, creeks and other state waters of the Commonwealth from pollution and impairment. Commercial and residential development of land as well as agricultural and other land uses may cause the impairment of state waters through nonpoint source pollution. In the exercise of their authority to control land use and development, it is the responsibility of counties, cities and towns to consider the protection of all bays, lakes, rivers, streams, creeks, and other state waters from nonpoint source pollution. The exercise of environmental stewardship by individuals is necessary to protect state waters from nonpoint source pollution. To promote achievement of the directives of Article XI of the Constitution of Virginia and to implement the cooperative programs established by this chapter, the state shall assist local governments, soil and water conservation districts and individuals in restoring, protecting and improving water quality through grants provided from the Fund.

B. In order to restore, protect and improve the quality of all bays, lakes, rivers, streams, creeks and other state waters, and to achieve the pollution reduction goals, including nutrient reduction goals, established in commitments made by the Commonwealth to water quality restoration, protection and enhancement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments, soil and water conservation districts and individuals in the control of nonpoint source pollution, including nutrient reduction, through technical and financial assistance made available through grants provided from the Fund as provided in § 10.1-2132.

§ 10.1-2125. Powers and duties of the Board.

The Board, in meeting its responsibilities under the cooperative program established by this article, after consultation with other appropriate agencies, is authorized and has the duty to:

1. Encourage and promote nonpoint source pollution control and prevention, including nutrient control and prevention, for the: (i) protection of public drinking water supplies; (ii) promotion of water resource conservation; (iii) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable beneficial uses and will support the propagation and growth of all aquatic life, including finfish and shellfish, which might reasonably be expected to inhabit them; (iv) protection of all state waters from nonpoint source pollution; (v) prevention of any increase in nonpoint source pollution; (vi) reduction of existing nonpoint source pollution; (vii) attainment and maintenance of water quality standards established under subdivisions (3a) and (3b) of § 62.1-44.15; and (viii) attainment of commitments made by the Commonwealth to water quality restoration, protection and enhancement including the goals of the Chesapeake Bay Agreement, as amended, all in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

2. Provide technical assistance and advice to local governments and individuals concerning aspects of water quality restoration, protection and improvement relevant to nonpoint source pollution.

3. Apply for, and accept, federal funds and funds from any other source, public or private, that may become available and to transmit such funds to the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

4. Enter into contracts necessary and convenient to carry out the provisions of this article.

5. Seek the assistance of other state agencies and entities including but not limited to the Chesapeake

Bay Local Assistance Department, the Department of Forestry and the Virginia Soil and Water Conservation Board as appropriate in carrying out its responsibilities under this chapter.

§ 10.1-2126. Additional powers and duties of Director.

A. In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

B. The Director shall be vested with the authority of the Board when the Board is not in session, subject to such limitations as may be prescribed by the Board. In no event shall the Director have the authority to promulgate any final regulation pursuant to the provisions of this chapter.

§ 10.1-2127. Nonpoint source pollution water quality assessment.

A. By July 1, 1998, and biennially thereafter, the Department, in conjunction with other state agencies, shall evaluate and report on the impacts of nonpoint source pollution on water quality and water quality improvement to the Governor and the General Assembly. The evaluation shall at a minimum include considerations of water quality standards, fishing bans, shellfish contamination, aquatic life monitoring, sediment sampling, fish tissue sampling and human health standards. The report shall, at a minimum, include an assessment of the geographic regions where water quality is demonstrated to be impaired or degraded as the result of nonpoint source pollution and an evaluation of the basis or cause for such impairment or degradation.

B. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to address identified nonpoint source pollution impairment or degradation, including excess nutrients. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the causes of nonpoint source pollution, including those related to excess nutrients. These initiatives may include the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.

C. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region not identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to prevent nonpoint source pollution impairment or degradation. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the nonpoint source pollution causes, including the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.

D. The Department shall, on or before January 1 of each year, report to the Governor and the General Assembly on whether cooperative nonpoint source pollution programs, including nutrient reduction programs, developed pursuant to this section are being effectively implemented to meet the objectives of this article.

Article 4.

Virginia Water Quality Improvement Fund.

§ 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, ten percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act and ten percent of any unreserved 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. The purpose of the Fund is to provide Water Quality Improvement Grants to local governments, soil and water conservation districts 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.

§ 10.1-2129. Agency coordination; conditions of grants.

A. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the State Forester and the Directors of the Departments of Environmental Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance Department 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 (i) allocate moneys in the Fund between point and nonpoint source pollution and (ii) develop written guidelines for the distribution and conditions of Water Quality Improvement Grants and criteria for prioritizing funding requests. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other factors as may be appropriate: (i) specific practices and programs proposed in any tributary plan required by Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1, 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 guidelines shall include procedures for soliciting applications for funding and shall ensure that both point and nonpoint source pollution are equitably addressed and funded in each year.

B. In addition to those the Secretary deems advisable, the criteria for prioritizing funding requests shall include: (i) 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; (ii) documented water quality impairment; (iii) the achievement of greater water quality improvements than that required by state or federal law; and (iv) the availability of other funding mechanisms. In the event of a local government grant application request for greater than fifty percent funding for any single project 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.

§ 10.1-2130. General provisions related to grants from the Fund.

All Water Quality Improvement Grants shall be governed by a legally binding and enforceable grant agreement between the recipient and the granting agency. In addition to provisions providing for payment of the total amount of the grant, the agreement shall at a minimum also contain provisions that govern design and installation and require proper long-term operation, monitoring and maintenance of funded projects, including design and performance criteria, as well as contractual or stipulated penalties in an amount sufficient to ensure compliance with the agreement, which may include repayment with interest, for any breach of the agreement, including failure to properly operate, monitor or maintain. Grant agreements shall be made available for public review and comment for a period of no less than thirty days but no more than sixty days prior to execution. The granting agency shall cause notice of a proposed grant agreement to be given to all applicants for Water Quality Improvement Grants whose applications are then pending.

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

A. The Department of Environmental Quality 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 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.

C. Notwithstanding the priority provisions of § 10.1-2129, in no event shall the Director of the Department of Environmental Quality authorize the distribution of grants from the Fund for purposes other than financing at least fifty percent of the cost of design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works until such time as all tributary plans required by Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1 are developed and implemented. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements. In addition to the provisions of § 10.1-2130 all grant agreements related to nutrients shall include: (i) numerical concentrations on nutrient discharges to state waters designed to achieve the nutrient reduction goals of the applicable tributary plan; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedences of no more than ten percent and for exceedences 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 biological nutrient removal facilities or other nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution

criteria. At least fifty percent of the cost of the design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of the tributary plans, the Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements including but not limited to cost effective technologies to reduce nutrient loads. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants for technical assistance related to nutrient reduction.

§ 10.1-2132. Nonpoint source pollution funding; conditions for approval.

A. The Department of Conservation and Recreation shall be the lead state agency for determining the appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore, protect and improve the quality of state waters.

B. The Director of the Department of Conservation and Recreation shall, subject to available funds and in coordination with the Director of the Department of Environmental Quality, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements.

C. Grant funding may be made available to local governments, soil and water conservation districts and individuals who propose specific initiatives that are clearly demonstrated as likely to achieve reductions in nonpoint source pollution, including excess nutrients, to improve the quality of state waters. Such projects may include, but are in no way limited to, the acquisition of conservation easements related to the protection of water quality and stream buffers; conservation planning and design assistance to develop nutrient management plans for agricultural operations; implementation of cost-effective nutrient reduction practices; and reimbursement to local governments for tax credits and other kinds of authorized local tax relief that provides incentives for water quality improvement. The Director shall give initial priority consideration to the distribution of grants from the Fund for the purposes of implementing the tributary plans required by Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1. Until such time as the tributary plans are developed and implemented, the Director shall distribute fifty percent of the nonpoint grant funding to their implementation and fifty percent to areas of the Commonwealth not to be covered by the tributary plans, unless otherwise provided in the general appropriation act.

§ 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 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.

§ 10.1-2134. Annual report by Directors of the Departments of Environmental Quality and Conservation and Recreation.

The Directors of the Departments of Environmental Quality and Conservation and Recreation shall, by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients of grants made from the Virginia Water Quality Improvement Fund and the specific and measurable pollution reduction achievements to state waters anticipated as a result of each grant award, together with the amounts of continued funding required for the coming fiscal year under all fully executed grant agreements.