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**HOUSE BILL NO. 2330**

Offered January 17, 1997

*A BILL 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 10.1-2135, relating to the Virginia Water Quality Improvement Act of 1997.*

Patrons—Murphy, Abbitt, Almand, Armstrong, Baker, Barlow, Behm, Bennett, Bloxom, Brickley, Bryant, Callahan, Christian, Clement, Connally, Cooper, Councill, Cranwell, Crittenden, Croshaw, Crouch, Cunningham, Darner, Davies, DeBoer, Deeds, Diamonstein, Dickinson, Dillard, Drake, Forbes, Grayson, Guest, Hall, Hamilton, Heilig, Howell, Hull, Jackson, Johnson, Jones, D.C., Jones, J.C., Keating, Kilgore, Landes, Lovelace, Marshall, May, McDonnell, McEachin, Melvin, Mims, Moore, Moran, Morgan, Moss, Nelms, Nixon, O'Brien, Orrock, Phillips, Plum, Puller, Purkey, Reid, Rhodes, Robinson, Rollison, Ruff, Scott, Shuler, Spruill, Stump, Tata, Tate, Thomas, Van Landingham, Van Yahres, Wardrup, Watkins, Watts, Weatherholtz, Wilkins and Woodrum; Senator: Chichester

Referred to Committee on Chesapeake and Its Tributaries

**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 10.1-2135, 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 (§ 10.1-2129 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 local government, individual and landowner projects demonstrated as likely to have 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 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 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. Counties, cities and towns shall have such other authority as may be necessary to protect state waters from nonpoint*

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60 source pollution in a manner consistent with the provisions of this chapter.

61 Article 2.

62 Cooperative Point Source Pollution Program.

63 § 10.1-2120. Definitions.

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

65 "Department" means the Department of Environmental Quality.

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

67 § 10.1-2121. Cooperative point source pollution program.

68 In order to restore, protect and improve the quality of the bays, lakes, rivers, streams, creeks, and  
69 other state waters, and to achieve the pollution reduction goals established in commitments made by the  
70 Commonwealth to water quality restoration, protection and improvement, including but not limited to  
71 the Chesapeake Bay Agreement, as amended, the Department shall assist local governments and  
72 individuals in the control of point source pollution through technical and financial assistance made  
73 available through grants provided from the Fund. In providing this technical and financial assistance  
74 the Department shall give initial priority to local government capital construction projects designed to  
75 achieve nutrient reduction goals consistent with those established in the Chesapeake Bay Agreement, as  
76 amended, and thereafter to efforts consistent with other commitments made by the Commonwealth.

77 § 10.1-2122. Additional powers and duties of the Director.

78 In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the  
79 purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2129 et seq.)  
80 of this chapter.

81 Article 3.

82 Cooperative Nonpoint Source Pollution Program.

83 § 10.1-2123. Definitions.

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

85 "Board" means the Board of Conservation and Recreation.

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

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

88 § 10.1-2124. Cooperative nonpoint source pollution program.

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

100 B. In order to restore, protect and improve the quality of all bays, lakes, rivers, streams, creeks and  
101 other state waters, and to achieve the pollution reduction goals established in commitments made by the  
102 Commonwealth to water quality restoration, protection and enhancement, including but not limited to  
103 the Chesapeake Bay Agreement, as amended, the Department shall assist local governments, soil and  
104 water conservation districts, individuals and landowners in the control of nonpoint source pollution  
105 through technical and financial assistance made available through grants provided from the Fund. In  
106 providing this technical and financial assistance, the Department may give initial priority to programs  
107 and projects of local governments, soil and water conservation districts, individuals and landowners  
108 designed to achieve nutrient reduction goals consistent with those established in commitments made by  
109 the Commonwealth.

110 § 10.1-2125. Powers and duties of the Board.

111 The Board, in meeting its responsibilities under the cooperative program established by this article,  
112 is authorized and has the duty to:

113 1. Encourage, promote and achieve nonpoint source pollution control and prevention for the: (i)  
114 protection of public drinking water supplies; (ii) promotion of water resource conservation; (iii)  
115 protection of existing high quality state waters and restoration of all other state waters to a condition or  
116 quality that will permit all reasonable beneficial uses and will support the propagation and growth of  
117 all aquatic life, including finfish and shellfish, which might reasonably be expected to inhabit them; (iv)  
118 protection of all state waters from nonpoint source pollution; (v) prevention of any increase in nonpoint  
119 source pollution; (vi) reduction of existing nonpoint source pollution; (vii) attainment and maintenance  
120 of water quality standards; and (viii) attainment of commitments made by the Commonwealth to water  
121 quality restoration, protection and enhancement including the goals of the Chesapeake Bay Agreement,

as amended, all in order to provide for the health, welfare and safety of the present and future citizens of the Commonwealth.

2. Provide technical assistance and advice to local governments, individuals and landowners 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 use in the control and prevention of nonpoint source pollution.

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

5. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality from nonpoint source pollution as the Governor may assign.

§ 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 (§ 10.1-2129 et seq.) of this chapter.

B. The Director shall be vested with the authority of the Board when it is not in session, subject to such limitations as may be prescribed by the Board.

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

A. By July 1, 1998, and biennially thereafter, the Department 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. 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.

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 developed pursuant to subsection B are being effectively implemented to meet the objectives of this article.

§ 10.1-2128. Local water quality protection program development.

All counties, cities and towns are authorized to exercise their police and zoning powers to protect the quality of state waters from nonpoint source pollution consistent with the provisions of this article.

#### Article 4.

#### Virginia Water Quality Improvement Fund.

§ 10.1-2129. Virginia Water Quality Improvement Fund established; purposes.

A. There is hereby established in the state treasury a special 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, no less than ten percent of the annual revenue collections that are in excess of the official estimates in the general appropriation act and ten percent of any unexpended sums remaining in any agency's appropriation at the close of each fiscal year. 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 collected under this article 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.

183 Moneys in the Fund shall be used solely for Water Quality Improvement Grants. Expenditures and  
184 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the  
185 Comptroller upon the written request of the Director of the Department of Environmental Quality or the  
186 Director of the Department of Conservation and Recreation as provided in this article.

187 B. The purpose of the Fund is to provide Water Quality Improvement Grants to local governments,  
188 soil and water conservation districts, individuals and landowners for point and nonpoint source  
189 pollution prevention, reduction and control programs and efforts undertaken in accordance with the  
190 provisions of this chapter. The Fund shall not be used for agency operating expenses or for purposes of  
191 replacing or otherwise reducing any general, non-general, or special funds allocated or appropriated to  
192 any state agency.

193 § 10.1-2130. Agency coordination; conditions of grants.

194 Except as may otherwise be specified in the general appropriation act, the Directors of the  
195 Departments of Environmental Quality and Conservation and Recreation with the advice and guidance  
196 of the Board of Conservation and Recreation and the State Water Control Board, and in consultation  
197 with the Secretary of Natural Resources, shall develop a Memorandum of Agreement for the allocation  
198 of moneys in the Fund between point and nonpoint source pollution and for the distribution and  
199 conditions of Water Quality Improvement Grants. The Memorandum shall include criteria for  
200 prioritizing funding needs and shall ensure that both point and nonpoint source pollution are equitably  
201 addressed and funded in each year.

202 In addition to those the Directors and the Secretary deem advisable, the criteria for prioritizing  
203 funding requests shall include: (i) whether the location of the water quality restoration, protection or  
204 improvement project or program is within a watershed or subwatershed with documented water nutrient  
205 loading problems or adopted nutrient reduction goals; (ii) documented water quality impairment; (iii)  
206 the achievement of greater water quality improvements than that required by state or federal law; and  
207 (iv) the availability of other funding mechanisms. In the event of a local government grant application  
208 request for greater than fifty percent funding for any single project the Directors and the Secretary shall  
209 consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the  
210 Commission on Local Government. The development or implementation of cooperative programs  
211 developed pursuant to subsection B of § 10.1-2127 shall be given a high priority.

212 § 10.1-2131. General provisions related to grants from the Fund.

213 All Water Quality Improvement Grants shall be governed by an enforceable grant agreement between  
214 the recipient and the granting agency. In addition to provisions providing for the grant the agreement  
215 shall at a minimum also contain provisions requiring proper long-term operation, monitoring and  
216 maintenance of funded projects as well as contractual or stipulated penalties, including repayment with  
217 interest, for any breach of the agreement, including failure to properly operate, monitor or maintain.  
218 Grant agreements shall be made available for public review and comment for a period of no less than  
219 thirty days but no more than sixty days prior to execution.

220 § 10.1-2132. Point source pollution funding; conditions for approval.

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

224 B. The Director of the Department of Environmental Quality shall, subject to available funds and in  
225 coordination with the Director of the Department of Conservation and Recreation, direct the State  
226 Treasurer to make Water Quality Improvement Grants in accordance with the Memorandum of  
227 Agreement and criteria established pursuant to § 10.1-2130.

228 C. In no event shall the Director of the Department of Environmental Quality authorize the  
229 distribution of grants from the Fund for purposes other than financing at least fifty percent of the cost  
230 of installation of biological nutrient removal equipment or other nutrient removal technology at publicly  
231 owned treatment works until such time as all tributary plans required by Article 2 (§ 2.1-51.12:1 et seq.)  
232 of Chapter 5.1 of Title 2.1 are developed and implemented. Subsequent to the implementation of the  
233 tributary plans, the Director may authorize disbursements from the Fund for any water quality  
234 restoration, protection and improvements related to point source pollution that are clearly demonstrated  
235 as likely to achieve measurable and specific water quality improvements. Notwithstanding the previous  
236 provisions of this subsection, the Director may, at any time, authorize grants for technical assistance  
237 related to nutrient reduction.

238 § 10.1-2133. Nonpoint source pollution funding; conditions for approval.

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

242 B. The Director of the Department of Conservation and Recreation shall, subject to available funds  
243 and in coordination with the Director of the Department of Environmental Quality, direct the State  
244 Treasurer to make Water Quality Improvement Grants in accordance with the Memorandum of

245 Agreement and criteria established pursuant to § 10.1-2130.

246 C. Grant funding may be made available to local governments, soil and water conservation districts,  
247 individuals and landowners who demonstrate specific initiatives that are clearly demonstrated as likely  
248 to achieve reductions in nonpoint source pollution to improve the quality of state waters. Such projects  
249 may include, but are in no way limited to, the acquisition of conservation easements related to the  
250 protection of water quality and stream buffers.

251 § 10.1-2134. Annual report by State Treasurer.

252 The State Treasurer shall, by January 1 of each year, certify to the chairmen of the House  
253 Committee on Appropriations and the Senate Committee on Finance, the total amount of annual revenue  
254 collections in excess of the official estimate in the general appropriations act, the total amount of  
255 unexpended sums remaining in all agency appropriations at the close of the previous fiscal year and the  
256 total amount of funds that are to be directed to the credit of the Water Quality Improvement Fund under  
257 this article unless otherwise provided in the general appropriation act.

258 § 10.1-2135. Annual report by Directors of the Departments of Environmental Quality and  
259 Conservation and Recreation.

260 The Directors of the Departments of Environmental Quality and Conservation and Recreation shall,  
261 by January 1 of each year, report to the House Committee on Appropriations and Senate Committee on  
262 Finance the amounts and recipients of grants made from the Water Quality Improvement Fund and the  
263 specific and measurable pollution reduction achievements to state waters anticipated as a result of each  
264 grant award.