

# VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

## CHAPTER 509

*An Act to amend and reenact §§ 10.1-2129 through 10.1-2132 of the Code of Virginia, relating to the Virginia Water Quality Improvement Act of 1997.*

[H 814]

Approved March 27, 1999

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-2129 through 10.1-2132 of the Code of Virginia are amended and reenacted as follows:**

§ 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) annually, following a public comment period of at least thirty days' duration and a public hearing, allocate moneys in the Fund between point and nonpoint source pollution, and (ii) develop written guidelines for both of which shall receive allocations each year.~~

B. *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 develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality Improvement Grants; and (iii) list 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 to most effectively restore, protect and improve the quality of state waters: (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. The process for development of guidelines pursuant to this subsection shall, at a minimum, include (i) use of an advisory committee composed of interested parties; (ii) a sixty-day public comment period on draft guidelines; (iii) written responses to all comments received; and (iv) notice of the availability of draft guidelines and final guidelines to all who request such notice.*

~~B.~~ In addition to those the Secretary deems advisable *to most effectively restore, protect and improve the quality of state waters*, 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 *and to any person requesting such notice*.

§ 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. *The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements.*

C. Notwithstanding the priority provisions of § 10.1-2129, ~~in no event shall~~ the Director of the Department of Environmental Quality *shall not* 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 *unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the tributary plans.* ~~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; *instructional education directly associated with the implementation or maintenance of a specific nonpoint source pollution reduction initiative*; 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.