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## SENATE BILL NO. 49

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Murphy  
on February 24, 1999)

(Patron Prior to Substitute—Senator Bolling)

*A BILL to amend and reenact §§ 10.1-2128 through 10.1-2132 of the Code of Virginia, relating to the Virginia Water Quality Improvement Act of 1997.***Be it enacted by the General Assembly of Virginia:****1. That §§ 10.1-2128 through 10.1-2132 of the Code of Virginia are amended and reenacted as follows:**

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, *other than appropriated payments to the Revenue Stabilization Fund (§ 2.1-191.1 et seq.) and mandatory reappropriations required in the general appropriation act*, 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. *The Fund shall not be used to make grants to enable the grant recipient to achieve or comply with any requirements or conditions of a Virginia Pollutant Discharge Elimination System (VPDES) permit or a compliance or enforcement action related thereto; however, a grant recipient who has executed a grant agreement pursuant to § 10.1-2130 shall be entitled to receive moneys from the Fund in accordance with the terms of the grant agreement, regardless of any subsequent changes in the requirements or conditions of a VPDES permit or subsequent enforcement or compliance action related thereto. Nothing contained in this subsection shall preclude the making of grants to an individual required to obtain a permit under § 62.1-44.17:1 or § 62.1-44.17:1.1 in the event that changes in the requirements or conditions governing VPDES permits require that such an individual obtain a VPDES permit for the activity governed by § 62.1-44.17:1 or § 62.1-44.17:1.1.*

§ 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;

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60 and (iii) list criteria for prioritizing funding requests. In developing the guidelines the Secretary shall  
61 evaluate and consider, in addition to such other factors as may be appropriate *to most effectively restore,*  
62 *protect and improve the quality of state waters:* (i) specific practices and programs proposed in any  
63 tributary plan required by Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1, and the associated  
64 effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation  
65 caused by different types of nutrients released in different locations from different sources; and (iii)  
66 environmental benchmarks and indicators for achieving improved water quality. ~~The guidelines shall~~  
67 ~~include procedures for soliciting applications for funding and shall ensure that both point and nonpoint~~  
68 ~~source pollution are equitably addressed and funded in each year. The process for development of~~  
69 ~~guidelines pursuant to this subsection shall, at a minimum, include (i) use of an advisory committee~~  
70 ~~composed of interested parties; (ii) a sixty-day public comment period on draft guidelines; (iii) written~~  
71 ~~responses to all comments received; and (iv) notice of the availability of draft guidelines and final~~  
72 ~~guidelines to all who request such notice.~~

73 B. In addition to those the Secretary deems advisable *to most effectively restore, protect and improve*  
74 *the quality of state waters,* the criteria for prioritizing funding requests shall include: (i) whether the  
75 location of the water quality restoration, protection or improvement project or program is within a  
76 watershed or subwatershed with documented water nutrient loading problems or adopted nutrient  
77 reduction goals; (ii) documented water quality impairment; (iii) the achievement of greater water quality  
78 improvements than that required by state or federal law; and (iv) the availability of other funding  
79 mechanisms. In the event of a local government grant application request for greater than fifty percent  
80 funding for any single project, the Directors and the Secretary shall consider the comparative revenue  
81 capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The  
82 development or implementation of cooperative programs developed pursuant to subsection B of  
83 § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement  
84 Grants from the moneys allocated to nonpoint source pollution.

85 § 10.1-2130. General provisions related to grants from the Fund.

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

97 § 10.1-2131. Point source pollution funding; conditions for approval.

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

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

106 C. Notwithstanding the priority provisions of § 10.1-2129, ~~in no event shall~~ the Director of the  
107 Department of Environmental Quality *shall not* authorize the distribution of grants from the Fund for  
108 purposes other than financing at least fifty percent of the cost of design and installation of biological  
109 nutrient removal facilities or other nutrient removal technology at publicly owned treatment works until  
110 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  
111 are developed and implemented *unless he finds that there exists in the Fund sufficient funds for*  
112 *substantial and continuing progress in implementation of the tributary plans. The Director shall manage*  
113 *the allocation of grants from the Fund to ensure the full funding of executed grant agreements.* In  
114 addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i)  
115 numerical concentrations on nutrient discharges to state waters designed to achieve the nutrient reduction  
116 goals of the applicable tributary plan; (ii) enforceable provisions related to the maintenance of the  
117 numerical concentrations that will allow for exceedences of no more than ten percent and for  
118 exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the  
119 Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to  
120 local governments to fund their share of the cost of designing and installing biological nutrient removal  
121 facilities or other nutrient removal technology based on financial need and subject to availability of

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

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

134 § 10.1-2132. Nonpoint source pollution funding; conditions for approval.

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

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

143 C. Grant funding may be made available to local governments, soil and water conservation districts  
144 and individuals who propose specific initiatives that are clearly demonstrated as likely to achieve  
145 reductions in nonpoint source pollution, including excess nutrients, to improve the quality of state  
146 waters. Such projects may include, but are in no way limited to, the acquisition of conservation  
147 easements related to the protection of water quality and stream buffers; conservation planning and design  
148 assistance to develop nutrient management plans for agricultural operations; *instructional education*  
149 *directly associated with the implementation or maintenance of a specific nonpoint source pollution*  
150 *reduction initiative*; implementation of cost-effective nutrient reduction practices; and reimbursement to  
151 local governments for tax credits and other kinds of authorized local tax relief that provides incentives  
152 for water quality improvement. The Director shall give initial priority consideration to the distribution of  
153 grants from the Fund for the purposes of implementing the tributary plans required by Article 2  
154 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1. Until such time as the tributary plans are developed  
155 and implemented, the Director shall distribute fifty percent of the nonpoint grant funding to their  
156 implementation and fifty percent to areas of the Commonwealth not to be covered by the tributary plans,  
157 unless otherwise provided in the general appropriation act.