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SENATE BILL NO. 1240

Offered January 14, 2005

A BILL to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 21.2, consisting of sections numbered 10.1-2135 through 10.1-2140, and in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-272, relating to the establishment of the Virginia Clean Streams Act.

Patron—Whipple

Referred to Committee on Agriculture, Conservation and Natural Resources

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 21.2, consisting of sections numbered 10.1-2135 through 10.1-2140 and in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-272, as follows:

CHAPTER 21.2.

VIRGINIA CLEAN STREAMS ACT.

§ 10.1-2135. Definitions.

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

"Industrial user" means a facility that is (i) connected to a municipal sewage system that engages in the mechanical or chemical transformation of materials or substances into new or marketable products, and (ii) usually identified as a plant, factory, or mill and classified as a manufacturer in Codes 20 through 39 of the Standard Industrial Classification (SIC) Manual published by the U.S. Department of Commerce.

"Locality" means a county, municipal corporation, sanitary district, or other state or local public entity that has authority to own or operate a facility, and includes any combination of two or more of such entities when acting jointly to construct or operate a facility.

"Residential user" means a room or group of rooms occupied as living quarters by an individual, single family, or other discrete group of persons with facilities that are used or intended to be used for living, sleeping, cooking, and eating, including, but not limited to, an apartment unit, a condominium unit, a cooperative unit, a townhouse, a mobile home, retirement home, assisted living facility, or a house, connected to a municipal sewer system, septic system, or other on-site wastewater treatment system. Residential user does not include: hospitals, hotels, motels, inns, dormitories, schools, colleges, or similar seasonal, institutional, or transient facilities.

"Municipal sewage system" means a publicly or privately owned sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage disposal system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation.

"State-of-the-art nutrient removal technology" means technology that will achieve at least a 3-4 mg/L total nitrogen concentration in effluent discharges.

§ 10.1-2136. Policy.

A. Pursuant to the duties and responsibilities established in Article XI of the Constitution of the Commonwealth of Virginia, it shall be the policy of the General Assembly to apply, use, and dedicate any funds obtained as a result of the implementation of this chapter to the reduction of nitrogen and phosphorus pollution discharged to the waters of the Commonwealth from municipal sewage systems and agricultural lands, as a priority, and thereafter to ensuring that the water quality of the surface and ground waters of the Commonwealth is such that levels of pollution contained therein shall not violate water quality criteria and standards adopted pursuant to the Federal Clean Water Act Section 303 (33 U.S.C. § 1313) and the subdivision (3a) of 62.1-44.15.

§ 10.1-2137. Dedicated Virginia Clean Streams user fee.

A. For each residential user there shall be a Virginia Clean Streams fee of \$52 per year collected and paid.

B. For each industrial user there shall be a Virginia Clean Streams fee of \$1,200 per year collected

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SB1240

59 and paid.

60 § 10.1-2138. Collection and payment.

61 A. Every locality shall collect the Virginia Clean Streams fee and shall remit the moneys generated
62 from the fee to the State Treasurer, for deposit into the Water Quality Improvement Fund established by
63 § 10.1-2128. Payments shall be made within 30 days of the end of the Commonwealth's fiscal year, with
64 the first remittance due July 30, 2006.

65 B. Each locality may withhold up to \$50,000 or three percent of the amount due annually, whichever
66 is less, for the purpose of covering administrative costs associated with the collection and remittance of
67 the fee, including the development and distribution of public education materials explaining the Virginia
68 Clean Streams fee. The locality may collect the fee through any reasonable and lawful method,
69 including, but not limited to: personal property tax assessments, real estate assessments, municipal
70 sewage system bills, or contracts with municipal sewage system authorities. State and local agencies and
71 authorities shall provide assistance and cooperation as requested by a locality.

72 C. Each locality may establish criteria to exempt from collection and remittance any residential user
73 who is able to demonstrate substantial financial hardship. Localities shall submit exemption criteria to
74 the Virginia Clean Streams Advisory Commission, established pursuant to Chapter 40 (§ 30-266 et seq.)
75 of Title 30, for review. Criteria for demonstrating substantial financial hardship shall include, but not be
76 limited to, the following:

77 1. Residential users receiving energy assistance subsidy;

78 2. Residential users receiving public assistance such as supplemental security income (SSI) or food
79 stamps;

80 3. Residential users receiving veterans or social security disability benefits;

81 4. Residential users with annual income below the federal poverty limit;

82 A locality shall not grant an exemption based on substantial financial hardship unless at least two of
83 the criteria apply to the residential user seeking the exemption.

84 § 10.1-2139. Distribution and use of Virginia Clean Streams fee.

85 A. The moneys generated from the fee deposited in the Water Quality Improvement Fund shall be
86 distributed in the following manner:

87 1. Through December 31, 2010, 70 percent shall be administered by the Department of
88 Environmental Quality through grants or through distributions to the Virginia Resources Authority for
89 the sole purpose of designing and installing, or reimbursing for prior expenditures to design or install,
90 state-of-the-art nutrient removal technologies at municipal sewage systems. The Virginia Resources
91 Authority may utilize the moneys it receives to issue bonds for the design and installation of
92 state-of-the-art nutrient removal technologies for municipal sewage systems. Funding for any
93 state-of-the-art nutrient removal technology shall not exceed 90 percent of the cost of designing and
94 installing such technology. The moneys shall also be available when the design and installation of
95 state-of-the-art nutrient removal technology utilize the Public-Private Education Facilities and
96 Infrastructure Act (§ 56-575.1 et seq.). Notwithstanding any provisions to the contrary, when utilizing
97 the Public-Private Education Facilities and Infrastructure Act, 100 percent funding for the cost of
98 designing and installing such technology shall be available. Localities seeking to utilize the
99 Public-Private Education Facilities and Infrastructure Act shall also be eligible to obtain funding to
100 cover the costs of legal advice for contract negotiation and development with the private partner.
101 Moneys generated pursuant to this chapter and dispersed through grants or bonds shall be available to
102 municipal sewage systems without regard to the existence of any permit requirements imposed on the
103 discharge of nitrogen pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and as contained in
104 a Virginia Pollution Discharge Elimination System permit. In no single year shall the moneys be used
105 for projects or practices exclusively within or exclusively outside of the Chesapeake Bay watershed.

106 2. Through December 31, 2010, 30 percent shall be administered by the Department of Conservation
107 and Recreation through distributions to the Virginia Agriculture Best Management Practices Cost-share
108 Program for the sole purpose of implementing best management practices that reduce nitrogen and
109 phosphorous pollution from agricultural lands. In no single year shall the moneys be used for projects
110 or practices exclusively within or exclusively outside of the Chesapeake Bay watershed.

111 3. Beginning on January 1, 2011, 50 percent shall be administered by the Department of
112 Environmental Quality and 50 percent by the Department of Conservation and Recreation. At that time,
113 an additional priority to be considered by both departments shall be the design and implementation of
114 technologies that will substantially contribute to the removal of Category 5 impairments from waters
115 listed as having such impairments in the Virginia Water Quality Assessment 305(b) and the 303(d)
116 Integrated Report prepared pursuant to the Federal Clean Water Act (33 U.S.C. §§ 1313 and 1315). The
117 Department of Environmental Quality shall also apply no less than 10 percent of any funds to the
118 installation of technologies to assist in the cessation of combined sewer overflows.

119 § 10.1-2140. Refunds.

120 The State Treasurer shall refund to localities on a pro rata basis, for the sole purpose of refunding

to residential users and industrial users, any money in excess of \$160 million in the Water Quality Improvement Fund expressly collected or appropriated for the specific purposes of § 10.1-2139. The localities shall provide refunds to residential and industrial users who were assessed under the fee pursuant to § 10.1-2137 through any reasonable and lawful method, including, but not limited to, reductions in: future fee collections, personal property tax assessments, real estate assessments, municipal sewage system bills, or contracts with municipal sewage system authorities.

CHAPTER 40.

VIRGINIA CLEAN STREAMS ADVISORY COMMISSION.

§ 30-266. Virginia Clean Streams Advisory Commission.

The Virginia Clean Streams Advisory Commission is established as an Advisory Commission in the legislative branch of state government.

§ 30-267. Purpose.

The purpose of the Advisory Commission is to review, comment, and advise the Department of Environmental Quality and the Department of Conservation and Recreation on the implementation of the Virginia Clean Streams Act established under Chapter 21.2 (§ 10.1-2136 et seq.) of Title 10.

§ 30-268. Membership; terms; quorum; meetings.

The Advisory Commission shall have a total membership of 10 members that shall consist of six legislative members, and four nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate, to be appointed by the Senate Committee on Rules; four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one nonlegislative citizen member to be appointed by the Senate Committee on Rules; one nonlegislative citizen member to be appointed by the Speaker of the House of Delegates; and two nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. Nonlegislative citizen members of the Advisory Commission shall be citizens of the Commonwealth.

Legislative members of the Advisory Commission shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for a term of two years, except for members appointed by the Governor who shall serve four-year terms. However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms, and no nonlegislative citizen member appointed by the Senate Committee on Rules or the Speaker of the House of Delegates shall serve more than four consecutive two-year terms, and no nonlegislative member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointment. All members may be reappointed.

The Advisory Commission shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The Advisory Commission shall meet no more than two times each year. The meetings of the Advisory Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Advisory Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Advisory Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Advisory Commission.

§ 30-269. Compensation; expenses.

Legislative members of the Advisory Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided from the fees collected under Chapter 21.2 (§ 10.1-2135 et seq.) of Title 10.1.

§ 30-270. Powers and duties of the Advisory Commission.

The Advisory Commission shall have the following powers and duties:

1. To review, comment, and advise the Department of Environmental Quality and the Department of Conservation on the implementation of the Virginia Clean Stream Act established in Chapter 21.2 (§ 10.1-2135 et seq.) of Title 10.1;

2. To review and comment on any proposed criteria submitted by locality pursuant to subsection C of § 10.1-2138;

3. To receive annual reports from the Department of Environmental Quality and the Department of Conservation concerning grant applications, grant approvals and denials, the status and outcome of previously approved grants, and such other information as the Advisory Commission deems useful and necessary for its purpose; and

182 4. To submit to the Governor and the General Assembly an annual report for publication as a report
183 document as provided in the procedures of the Division of Legislative Automated Systems for the
184 processing of legislative documents and reports. The chairman shall submit to the General Assembly and
185 the Governor an annual executive summary of the interim activity and work of the Advisory Commission
186 no later than the first day of each regular session of the General Assembly. The executive summary
187 shall be submitted for publication as a report document as provided in the procedures of the Division of
188 Legislative Automated Systems for the processing of legislative documents and reports and shall be
189 posted on the General Assembly's website.

190 § 30.1-271. Staffing.

191 The Department of Environmental Quality and the Department of Conservation and Recreation shall
192 provide staff support to the Advisory Commission. The Division of Legislative Services shall provide
193 legal assistance to the Advisory Commission. All agencies of the Commonwealth shall provide assistance
194 to the Advisory Commission, upon request. Administrative staff support shall be provided by the Office
195 of the Clerk of the House of Delegates or the Office of the Clerk of the Senate as may be appropriate
196 for the house in which the chairman of the Advisory Commission serves.

197 § 30-272. Sunset.

198 This chapter shall expire on July 1, 2008.