

## Department of Planning and Budget

### 2011 Fiscal Impact Statement

**1. Bill Number:** HB2368

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:**    Ware, R.L.

**3. Committee:** Agriculture, Chesapeake and Natural Resources

**4. Title:**    Supplemental environmental projects.

**5. Summary:** This bill authorizes the Virginia Soil and Water Conservation Board, the Director of the Department of Conservation and Recreation, and courts to provide for the undertaking of supplemental environmental projects through orders. A 'supplemental environmental project' (SEP) is an environmentally beneficial project undertaken as partial settlement of a civil enforcement action that is not otherwise required by law. The project must have a reasonable geographic nexus to the violation or, if no such project is available, advance objectives of the law or regulation violated. Categories of qualifying projects are listed in the bill, as are factors to be considered in determining the appropriateness and value of a project. The project must be agreed to by the person who is subject to the order and is enforceable as is any other provision of the order. A board, agency, or court decision to agree to a project is not subject to appeal. A similar authority was granted to the Department of Environmental Quality in 1997.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary.

**8. Fiscal Implications:** This bill provides authority to the Department of Conservation and Recreation (DCR) to utilize SEPs as partial settlement of a civil enforcement action with the consent of the violator.

DCR is the state agency authorized to enforce compliance with the Virginia Stormwater Management Act and regulations. Current enforcement options allow DCR to charge penalties as part of enforcement settlements. Penalties are paid into the Stormwater Management Fund (established per Section 10.1-603.4:1, Code of Virginia). This proposal would expand the enforcement settlement options to allow DCR to include SEPs. According to the agency, these projects target the funds more efficiently and may help promote more timely settlements of civil enforcement actions.

Projects undertaken as SEPs must have a reasonable geographic nexus to the violation being settled or, if no project is available, advance at least one objective to address stormwater

management. Examples of projects include those that protect public health, prevent or reduce water pollution, and restore and protect water quality.

This bill is nearly identical in language and intent to Section 10.1-1186.2, Code of Virginia, which authorizes the Department of Environmental Quality (DEQ) to include SEPs as partial settlement of a civil enforcement action for violations found by the State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board or the Director of the agency. This authority was granted to DEQ in 1997.

At DCR's discretion, the inclusion of an SEP as part of an enforcement settlement negotiation may mitigate a portion of the civil charge. In this case, the revenue coming to the Stormwater Management Fund from civil penalties would decrease accordingly. The level of the impact on the fund is indeterminate at this time, although DCR does not include these penalties in the operational budget associated with this fund. Should any reductions be needed to the agency's nongeneral fund appropriation resulting from this proposal, they can be made administratively. Any other costs associated with this bill can be absorbed within the agency's current resources.

**9. Specific Agency or Political Subdivisions Affected:** Department of Conservation and Recreation.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.

**Date:** January 24, 2011

c: Secretary of Natural Resources