

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 609

An Act to amend and reenact § 10.1-2131 of the Code of Virginia, relating to the Virginia Water Quality Improvement Fund; publicly owned treatment works; nutrient reduction.

[H 1608]

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2131 of the Code of Virginia is amended and reenacted as follows:

§ 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 of the Department of Environmental Quality shall enter into grant agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions that payments thereunder are subject to the availability of funds.

C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works in the Chesapeake Bay watershed until such time as nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan are satisfied, unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the reductions established in accordance with regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan within the Chesapeake Bay watershed. In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedances of 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedances of 0.1 mg/L for total phosphorus or no more than 10%, and for exceedances 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 nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. If, pursuant to § 10.1-1187.6, the State Water Control Board approves an alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject to the terms of such approval. The cost of the design and installation of nutrient removal technology at publicly owned treatment works meeting the nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation 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 any applicable regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan, 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 of total phosphorus, total nitrogen, or nitrogen-containing ammonia in order to meet the requirements of regulations associated with the reduction of ammonia that have not yet been adopted and that are more stringent than regulations adopted by the State Water Control Board as of January 1, 2018. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.

D. The grant percentage provided for financing the costs of the design and installation of nutrient removal technology at publicly owned treatment works shall be based upon the financial need of the community as determined by comparing the annual sewer charges expended within the service area to the reasonable sewer cost established for the community.

E. Grants shall be awarded in the following manner:

1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than 0.30, the Director of the Department of Environmental Quality shall authorize grants in the amount of 35 percent of the costs of the design and installation of nutrient removal technology;

2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of the costs of the design and installation of nutrient removal technology;

3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of the costs of design and installation of nutrient removal technology; and

4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the design and installation of nutrient removal technology.

2. That the Department of Environmental Quality shall prepare a preliminary estimate of the amount and timing of Water Quality Improvement Grants required to fund projects to reduce loads of nitrogen-containing ammonia at the levels authorized by subsection E of § 10.2131 of the Code of Virginia, as amended by this act, based on an estimate of the anticipated range of costs for all publicly owned treatment works if the State Water Control Board were to adopt the 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia published by the U.S. Environmental Protection Agency. For purposes of preparing the preliminary estimate, the Department may rely upon readily available existing information and any reasonable assumption. The Department shall report such preliminary estimate and related assumptions no later than November 1, 2018, to the Chairmen of the Senate Finance Committee, the House Appropriations Committee, the Senate Committee on Agriculture, Conservation and Natural Resources, and the House Committee on Agriculture, Chesapeake and Natural Resources.