

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 533

An Act to amend and reenact § 10.1-2131 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 21.1 of Title 10.1 sections numbered 10.1-2127.1 and 10.1-2134.1 and by adding a section numbered 62.1-44.15:29.2, relating to Water Quality Improvement Grant; point source pollution; Stormwater Local Assistance Fund.

[H 1822]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2131 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 21.1 of Title 10.1 sections numbered 10.1-2127.1 and 10.1-2134.1 and by adding a section numbered 62.1-44.15:29.2 as follows:

§ 10.1-2127.1. Definitions.

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

"Fund" means the Virginia Water Quality Improvement Fund established by § 10.1-2128.

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

A. The Department of Environmental Quality (*the Department*) 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 (*the Director*) 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~~ if 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 cost effective technologies to reduce 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 any provision 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.

Notwithstanding any other provision of this chapter, the Director may at any time authorize grants for the design and installation of wastewater conveyance infrastructure that (a) diverts wastewater from one publicly owned treatment works that is eligible for grant funding under this chapter to another publicly owned treatment works that also is eligible for such funding; (b) diverts wastewater to a receiving treatment works that is capable of achieving compliance with its nutrient reduction or ammonia control discharge requirements and results in a net reduction in total phosphorus, total nitrogen, or nitrogen-containing ammonia discharges; and (c) results in a Water Quality Improvement Grant expense being incurred by the Department that is the same as or lower than the grant expense the Department would incur in funding design and installation of eligible nutrient removal or other applicable treatment technology at such treatment works that would have treated the wastewater in the absence of the diversion project.

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.

§ 10.1-2134.1. Water Quality Improvement Fund; estimate of requests.

The Department of Environmental Quality (the Department), in consultation with stakeholders, including representatives of the Virginia Association of Municipal Wastewater Agencies, local governments, and conservation organizations, shall annually determine an estimate of the amount of Water Quality Improvement Grant funding expected to be requested by local governments for projects that are related to point source pollution and are eligible for grant funding pursuant to the provisions of this chapter. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § 62.1-44.118.

§ 62.1-44.15:29.2. Stormwater Local Assistance Fund, estimate of requests.

The Department, in consultation with stakeholders, including representatives of the Virginia Municipal Stormwater Association, local governments, and conservation organizations, shall annually determine an estimate of the amount of stormwater local assistance matching grants expected to be requested by local governments for projects that are related to planning, designing, and implementing stormwater best management practices and are eligible for funding. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § 62.1-44.118.