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SENATE BILL NO. 508

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 1, 2022)

(Patron Prior to Substitute—Senator Lewis)

A *BILL to amend and reenact §§ 10.1-502, 10.1-504, 10.1-505, 10.1-603.24, and 10.1-603.25 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.3 of Chapter 6 of Title 10.1 a section numbered 10.1-603.28, relating to Water and Soil Conservation Board; Virginia Community Preparedness Fund.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-502, 10.1-504, 10.1-505, 10.1-603.24, and 10.1-603.25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.3 of Chapter 6 of Title 10.1 a section numbered 10.1-603.28 as follows:

§ 10.1-502. Soil and Water Conservation Board; composition.

The Virginia Soil and Water Conservation Board is continued and shall perform the functions conferred upon it in this chapter. The Board shall consist of ~~nine~~ 11 nonlegislative citizen members and one ex officio member with nonvoting privileges. The Director of the Department of Conservation and Recreation or his designee shall be a nonvoting ex officio member of the Board. Three nonlegislative citizen members of the Board shall be appointed by the Governor as at-large members, of whom at least two members shall have a demonstrated interest in natural resource conservation with a background or knowledge in dam safety, soil conservation, or water quality protection. Additionally, four nonlegislative citizen members shall be farmers at the time of their appointment and two nonlegislative citizen members shall be farmers or district directors. Each of the six nonlegislative members who is a farmer or district director shall be a resident of a different one of the six geographic areas represented in the Virginia Association of Soil and Water Conservation Districts and shall be appointed by the Governor from a list of two qualified nominees for each vacancy jointly submitted by the Board and the Board of Directors of the Virginia Association of Soil and Water Conservation Districts in consultation with the Virginia Farm Bureau Federation and the Virginia Agribusiness Council. *Additionally, one nonlegislative member shall be appointed by the Speaker of the House of Delegates from a flood-prone community outside of the Chesapeake Bay watershed, and one nonlegislative member shall be appointed by the Senate Committee on Rules from a flood-prone community in the Chesapeake Bay watershed.* Nonlegislative citizen members shall be appointed for a term of four years. All appointed members shall not serve more than two consecutive full terms. Appointments to fill vacancies shall be made in the same manner as the original appointments, except that such appointments shall be for the unexpired terms only. The Board may invite the Virginia State Conservationist, Natural Resources Conservation Service, to serve as an advisory nonvoting member. The Board shall keep a record of its official actions and adopt a seal and may perform acts, hold public hearings, and adopt regulations necessary for the execution of its functions under this chapter.

§ 10.1-504. Chairman; quorum.

The Board shall designate its chairman and may, from time to time, change such designation. ~~Five~~ Six members of the Board shall constitute a quorum, and the concurrence of a majority of those present and voting shall be required for all determinations. *Of the six members needed to constitute a quorum, at least four shall be farmer or district director representatives described in § 10.1-502.*

§ 10.1-505. Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

1. To give or loan appropriate financial and other assistance to district directors in carrying out any of their powers and programs.

2. To keep district directors informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between the districts.

3. To oversee the programs of the districts.

4. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of the Commonwealth, in the work of the districts.

5. To disseminate information throughout the Commonwealth concerning the activities and programs of the districts, and to encourage the formation of such districts in areas where their organization is desirable.

6. To assist persons, associations, and corporations engaged in furthering the programs of the districts; to encourage and assist in the establishment and operation of such associations and corporations, and to authorize financial assistance to the officers and members of such associations and

corporations in the discharge of their duties.

7. To receive, review, approve or disapprove applications for assistance in planning and carrying out works of improvement under the Watershed Protection and Flood Prevention Act (Public Law 566 — 83rd Congress, as amended), and to receive, review and approve or disapprove applications for any other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require such action by a state agency.

8. To advise and recommend to the Governor approval or disapproval of all work plans developed under Public Law 83-566 and Public Law 78-535 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.

9. To provide for the conservation of soil and water resources, control and prevention of soil erosion, flood water and sediment damages thereby preserving the natural resources of the Commonwealth.

10. To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § 10.1-104.1 and (ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § 10.1-104.2:1.

11. To provide, from such funds appropriated for districts, financial assistance for the administrative, operational and technical support of districts.

12. To administer the Virginia Community Preparedness Fund established under § 10.1-603.25.

§ 10.1-603.24. Definitions.

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

"Authority" means the Virginia Resources Authority.

"Board" means the Virginia Soil and Water Conservation Board.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

~~"Department" means the Virginia Department of Conservation and Recreation.~~

"Flood prevention or protection" means the construction of hazard mitigation projects, acquisition of land, or implementation of land use controls that reduce or mitigate damage from coastal or riverine flooding.

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted floods, the assessment of flood risk, and the development of strategies to prevent or mitigate damage from coastal or riverine flooding.

"Fund" means the Virginia Community Flood Preparedness Fund created pursuant to § 10.1-603.25.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution of Virginia or laws of the Commonwealth.

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Nature-based solution" means an approach that reduces the impacts of flood and storm events through the use of environmental processes and natural systems. A nature-based solution may provide additional benefits beyond flood control, including recreational opportunities and improved water quality.

§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.

A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund to be known as the Virginia Community Flood Preparedness Fund. All sums that are designated for deposit in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of § 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from the repayment of loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants and awards or other forms of assistance received by the Commonwealth that are eligible for deposit in the Fund under federal law, shall be designated for deposit to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including any appropriated funds and all principal, interest accrued, and payments, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All loans and grants provided under this article shall be deemed to promote the public purposes of enhancing flood prevention or protection and coastal resilience.

B. Moneys in the Fund shall be used solely for the purposes of enhancing flood prevention or protection and coastal resilience as required by this article. The Authority shall manage the Fund and shall establish interest rates and repayment terms of such loans as provided in this article in accordance with a memorandum of agreement with the ~~Department~~ Board. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the management of the Fund. The ~~Department~~ Board

shall direct distribution of loans and grants from the Fund in accordance with the provisions of subsection D.

C. The Authority is authorized at any time and from time to time to pledge, assign, or transfer from the Fund or any bank or trust company designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of principal of, premium, if any, and interest on any and all bonds, as defined in § 62.1-199, issued to finance any flood prevention or protection project undertaken pursuant to the provisions of this article. In addition, the Authority is authorized at any time and from time to time to sell upon such terms and conditions as the Authority deems appropriate any loan or interest thereon made pursuant to this article. The net proceeds of the sale remaining after payment of costs and expenses shall be designated for deposit to, and become part of, the Fund.

D. The Fund shall be administered by the ~~Department~~ Board as prescribed in this article. The ~~Department~~ Board, in consultation with the Secretary of Natural and Historic Resources and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines regarding the distribution and prioritization of loans and grants, including loans and grants that support flood prevention or protection studies of statewide or regional significance.

E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood prevention and protection projects and studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood damage and to assist inland and coastal communities across the Commonwealth that are subject to recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each year shall be used for projects in low-income geographic areas. Priority shall be given to projects that implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood risk.

F. Any locality is authorized to secure a loan made pursuant to this section by placing a lien up to the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate to each prior lien on such property, except prior liens for which the prior lienholder executes a written subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and exclusive discretion, that is recorded in the land records where the property is located.

G. Any locality using moneys in the Fund to provide a loan for a project in a low-income geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year to the Fund by the General Assembly.

§ 10.1-603.28. Record of application for grants or loans and action taken.

A record of each application for a grant or loan and the action taken thereon shall be open to public inspection at the office of the Board. The Authority shall submit an annual report to the General Assembly and the Governor on the Fund and the administration of all grants and loans made from the Fund.