

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 206

*An Act to amend and reenact § 62.1-44.15:23.1 of the Code of Virginia, relating to Wetland and Stream Replacement Fund; availability of credits; use of funds.*

[H 1628]

Approved March 22, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:23.1 of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:23.1. Wetland and Stream Replacement Fund established.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Wetland and Stream Replacement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All contributions to the Board pursuant to clause (iii) of subsection B of § 62.1-44.15:21 shall be paid into the state treasury and credited 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 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered and utilized by the Department of Environmental Quality. The Fund may be used as an additional mechanism for compensatory mitigation for impacts to aquatic resources (i) that result from activities authorized under (a) Section 404 and 401 of the Clean Water Act (33 U.S.C. § 1251 et seq.), (b) the Virginia Water Protection Permit Regulation (9 VAC 25-210 et seq.), or (c) Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403); (ii) that result from unauthorized activities in waters of the United States or state waters; and (iii) in other cases, as the appropriate regulatory agencies deem acceptable. Moneys in the Fund shall be used for the purpose of purchasing mitigation bank credits in compliance with the provisions of subsection B of § 62.1-44.15:23 as soon as practicable if qualifying credits are available after moneys are collected. If such the Department determines within two years after the collection of moneys for a specific impact that credits are will not be available within three years of the collection of moneys for a such specific impact, then funds shall may be utilized either (1) to purchase credits from a Board-approved fund that have met the success criteria, if qualifying credits are available, (2) for the planning, construction, monitoring, and preservation of wetland and stream mitigation projects and preservation, enhancement, or restoration of upland buffers adjacent to wetlands or other state waters when used in conjunction with creation or restoration of wetlands and streams, or (3) for other water quality improvement projects as deemed acceptable by the Department of Environmental Quality. Such projects developed under clause (2) shall be developed in accordance with guidelines, responsibilities, and standards established by the Department of Environmental Quality for use, operation, and maintenance consistent with 33 CFR Part 332, governing compensatory mitigation for activities authorized by U.S. Army Corps of Engineer permits. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Environmental Quality. The Department may charge a reasonable fee to administer the Fund.