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HOUSE BILL NO. 259

Offered January 10, 2024

Prefiled January 5, 2024

A BILL to amend and reenact §§ 10.1-603.19 and 10.1-606.2 of the Code of Virginia, relating to Dam Safety, Flood Prevention, and Protection Assistance Fund; percentage of funds available; owner match requirements.

Patron—Orrock

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.19 and 10.1-606.2 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-603.19. Purposes for which Fund is to be used; Authority to set terms and conditions of loans.

A. The Director may make grants or loans to any local government for the purpose of assisting the local government in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies.

B. The Director may expend from the Fund up to \$50,000 annually for cost share with federal agencies in flood protection studies of statewide or regional significance.

C. The Director may, in order to protect public safety and welfare, make (i) grants or loans to a local government that owns a dam, to a local government for a dam located within the locality, or to a private entity that owns a dam for the design, repair, and the safety modifications of such a dam if it is identified in a safety report generated pursuant to § 10.1-607 or 10.1-609 and (ii) grants to a local government or private entity for the determination of the hazard classification for impounding structures, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements, such as emergency action plan development *and inspection reports*.

D. The Director may, in order to reduce dam owner expenses associated with hazard classification, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development *and inspection reports*, expend moneys from the Fund to employ staff or to directly contract for these services. The Director may establish a fee to be paid by the dam owner to offset a portion of these services. Such fee shall not exceed 50 percent of the cost incurred by the Department.

E. The Director may, in order to protect people at risk from a dam failure and to assist dam owners, localities, and emergency responders, expend moneys from the Fund to maintain a statewide dam failure early warning system in cooperation with the Department of Emergency Management and the U.S. National Weather Service.

F. The total amount of expenditures for grants in any fiscal year shall not exceed ~~50 percent~~ of the total noninterest or income deposits made to the Fund ~~during the previous fiscal year~~, together with the total amount collected in interest or income from the investment of moneys in the Fund ~~from the previous fiscal year~~ as determined at the beginning of the fiscal year.

G. Any grants made from the Fund *pursuant to clause (i) of subsection C* shall require a ~~50~~ 30 percent project match by the applicant. Any loans made from the Fund *for such activities or for engineering requirements needed to complete such activities included in clause (i) of subsection C* shall require a minimum of a 10 percent project match by the applicant.

H. Any grants made from the Fund *pursuant to clause (ii) of subsection C* shall require no more than a 10 percent match by the applicant except that the applicant shall be required to provide a minimum of \$5,000 of the cost of the project, if funded. The match provided by the applicant may be used to pay the application fees for the necessary impounding structure operation and maintenance certificate.

I. Except as otherwise provided in this article, moneys in the Fund shall be used solely to make loans or grants to local governments or private entities to finance or refinance the cost of a project. The local government or private entity to which loans or grants are made, the purposes of the loan or grant, the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be from the Fund, at the Director's

59 discretion, to a local government that has developed a low-interest loan program to provide loans or
60 other incentives to facilitate the correction of dam or impounding structure deficiencies, as required by
61 the Department, provided that the moneys are to be used only for the program and that the dams or
62 impounding structures to be repaired or upgraded are owned by private entities.

63 F. J. Except as otherwise provided in this article, the Authority shall determine the interest rate and
64 terms and conditions of any loan from the Fund, which may vary between different loans and between
65 local governments and private entities to finance or refinance the cost of a project. Each loan shall be
66 evidenced by appropriate bonds or notes of the local government or by the appropriate debt instrument
67 for private entities payable to the Fund. Private entities shall duly authorize an appropriate debt
68 instrument and execute same by their authorized legal representatives. The bonds or notes shall have
69 been duly authorized by the local government and executed by its authorized legal representatives. The
70 Authority may require in connection with any loan from the Fund such documents, instruments,
71 certificates, legal opinions, covenants, conditions, and other information as it may deem necessary or
72 convenient to further the purpose of the loan. In addition to any other terms or conditions that the
73 Authority may establish, the Authority may require, as a condition to making any loan from the Fund,
74 that the local government or private entity receiving the loan covenant to perform any of the following:

75 1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a
76 specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the
77 project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal
78 of, premium, if any, and interest on the loan from the Fund; and (iii) any amounts necessary to create
79 and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate
80 by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees, or charges;

81 2. With respect to local governments, levy and collect ad valorem taxes on all property within the
82 jurisdiction of the local government subject to local taxation sufficient to pay the principal of and
83 premium, if any, and interest on the loan from the Fund to the local government;

84 3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,
85 and interest on the loan from the Fund and any other amounts becoming due under any agreement
86 entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the
87 project or any portions thereof or other property of the borrower, and deposit into any fund or funds
88 amounts sufficient to make any payments on the loan as they become due and payable;

89 4. Create and maintain other special funds as required by the Authority;

90 5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of,
91 premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in
92 the event of any default by the borrower in payment of the loan, including, without limitation, any of
93 the following:

94 a. The conveyance of, or the granting of liens on or security interests in, real and personal property,
95 together with all rights, title and interest therein;

96 b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security,
97 liquidity arrangements or credit supports for the loan from any source, public or private, and the
98 payment therefor of premiums, fees, or other charges;

99 c. The combination of one or more projects, or the combination of one or more projects with one or
100 more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and
101 the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems
102 to secure the loan from the Fund borrower made in connection with such combination or any part or
103 parts thereof;

104 d. The maintenance, replacement, renewal, and repair of the project; and

105 e. The procurement of casualty and liability insurance;

106 6. Obtain a review of the accounting and internal controls from the Auditor of Public Accounts or
107 his legally authorized representatives, as applicable. The Authority may request additional reviews at any
108 time during the term of the loan. In addition, anyone receiving a report in accordance with
109 § 10.1-603.23 may request an additional review as set forth in this section; and

110 7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to
111 obtain payment of any amounts in default, as applicable.

112 All local governments or private entities borrowing money from the Fund are authorized to perform
113 any acts, take any action, adopt any proceedings, and make and carry out any contracts that are
114 contemplated by this article. Such contracts need not be identical among all local governments or private
115 entities but may be structured as determined by the Authority according to the needs of the contracting
116 local governments or private entities and the Fund.

117 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
118 Authority may consent to and approve any modification in the terms of any loan to any local
119 government.

120 **§ 10.1-606.2. Mapping of dam break inundation zones.**

121 A. An owner of an impounding structure shall prepare a map of the dam break inundation zone for
122 the impounding structure in accordance with criteria set out in the Virginia Impounding Structure
123 Regulations (4VAC50-20). Existing maps prepared by the locality in accordance with these regulations
124 may be used for this purpose.

125 B. All maps prepared in accordance with subsection A shall be filed with the Department of
126 Conservation and Recreation and with the offices with plat and plan approval authority or zoning
127 responsibilities as designated by the locality for each locality in which the dam break inundation zone
128 resides.

129 C. Owners of impounding structures may be eligible for matching grants of up to 50 percent from
130 the Dam Safety, Flood Prevention and Protection Assistance Fund and other sources of funding available
131 to the Director to assist in the development of dam break inundation zone maps and for conducting
132 incremental damage assessments in accordance with the Virginia Impounding Structure Regulations.

133 D. All properties identified within the dam break inundation zone shall be incorporated by the owner
134 into the dam safety emergency action plan of that impounding structure so as to ensure the proper
135 notification of persons downstream and other affected persons or property owners in the event of an
136 emergency condition at the impounding structure.