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SENATE BILL NO. 698

Offered January 19, 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—French

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

J. Except as otherwise provided in this article, the Authority shall determine the interest rate and terms

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

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

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

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

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

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

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

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

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

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

99 e. The procurement of casualty and liability insurance;

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

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

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

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

113 **§ 10.1-606.2. Mapping of dam break inundation zones.**

114 A. An owner of an impounding structure shall prepare a map of the dam break inundation zone for the
 115 impounding structure in accordance with criteria set out in the Virginia Impounding Structure Regulations
 116 (4VAC50-20). Existing maps prepared by the locality in accordance with these regulations may be used for
 117 this purpose.

118 B. All maps prepared in accordance with subsection A shall be filed with the Department of Conservation
 119 and Recreation and with the offices with plat and plan approval authority or zoning responsibilities as

120 designated by the locality for each locality in which the dam break inundation zone resides.

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

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

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