

HOUSE BILL NO. 1403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

on February 20, 2024)

(Patron Prior to Substitute--Delegate Laufer)

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.

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.

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

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

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

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

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

48 I. Except as otherwise provided in this article, moneys in the Fund shall be used solely to make
49 loans or grants to local governments or private entities to finance or refinance the cost of a project. The
50 local government or private entity to which loans or grants are made, the purposes of the loan or grant,
51 the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated
52 in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of

53 the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus
54 reasonable financing expenses. Loans may also be from the Fund, at the Director's discretion, to a local
55 government that has developed a low-interest loan program to provide loans or other incentives to
56 facilitate the correction of dam or impounding structure deficiencies, as required by the Department,
57 provided that the moneys are to be used only for the program and that the dams or impounding structures
58 to be repaired or upgraded are owned by private entities.

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

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

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

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

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

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

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

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

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

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

101 e. The procurement of casualty and liability insurance;

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

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

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

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

115 **§ 10.1-606.2. Mapping of dam break inundation zones.**

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

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

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

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

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