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SENATE BILL NO. 712

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding sections numbered 10.1-1186.4 and 10.1-1186.5, and to repeal § 2.1-429.01 of the Code of Virginia, relating to the transfer of the laboratory certification program to the Department of Environmental Quality.

Patrons—Watkins, Hanger, Hawkins, Miller, K.G., Puckett and Stolle

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 10.1-1186.4 and 10.1-1186.5 as follows:

§ 10.1-1186.4. Environmental laboratory certification programs.

A. The Department shall, by regulation, establish a compliance-based program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ 10.1-1300 et seq.) of this title, the Virginia Waste Management Act (§ 10.1-1400 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.). The purpose of the program shall be to ensure that laboratories provide accurate and consistent tests, analyses, measurements, and monitoring as required under Virginia's environmental laws.

In addition, the Department shall, by regulation, establish a certification program in accordance with the accreditation standards of the National Environmental Laboratory Accreditation Conference (NELAC) for laboratories that routinely provide testing services for customers as well as other laboratories that desire NELAC-based certification. The NELAC-based program shall include, but need not be limited to, minimum criteria for (i) laboratory procedures, (ii) performance evaluations, (iii) supervisory and personnel requirements, (iv) facilities and equipment, (v) analytical quality control and quality assurance, (vi) certificate issuance and maintenance, and (vii) recertification and decertification.

Both the compliance-based and NELAC-based programs may also include provisions for granting partial and full exemptions from the program based on compliance and performance histories and laboratory size. The NELAC-based program shall be developed in consultation with the Division of Consolidated Laboratory Services. Regulations of the Department shall be adopted in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

B. All laboratories requiring certification under either the compliance-based or NELAC-based program shall submit a complete application for certification within 120 days after the effective date of the regulations adopted by the Department applicable to them. All other laboratories shall submit a complete application for certification under the compliance-based program, and as appropriate, the NELAC-based program, sixty days before commencement of testing for the purposes of Chapter 13 (§ 10.1-1300 et seq.) of this title, the Virginia Waste Management Act, or the State Water Control Law.

C. Actual or pending certification shall be required before any tests, analyses, measurements, or monitoring performed by a laboratory subject to certification regulations may be used for the purposes of Chapter 13 (§ 10.1-1300 et seq.) of this title, the Virginia Waste Management Act, or the State Water Control Law. Pending certification shall commence upon the filing of a complete application for certification and shall continue for each applicant until the Department makes a certification decision. Laboratories operating under a pending certification shall disclose to customers that the laboratory's application for certification is pending.

D. The Department shall develop procedures to require prompt notice to customers of laboratories at which any material deficiencies with either compliance-based or NELAC-based programs are identified. In the case of out-of-state laboratories, upon the identification or discovery of any material deficiencies by the laboratory or its state permitting or certification agency, notice shall be given to both the Department and to all Virginia customers or users of the laboratory.

E. The Department shall by regulation establish a fee system to offset the costs of the NELAC-based program as well as any increased costs to implement any new activities of the Department under the compliance-based program above fiscal year 2000 levels. All such fees shall be deposited in the State Laboratory Certification Fund established pursuant to § 10.1-1186.5 and used solely for offsetting the costs of the laboratory certification programs.

F. The Department shall develop procedures, including the payment of any applicable fees, for determining the qualifications for certification of laboratories located in jurisdictions outside of Virginia to conduct tests, analyses, measurements, or monitoring for use in Virginia. Laboratories located outside of Virginia that are certified or accredited under a program determined by the Department to be

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60 *substantially equivalent to the programs established under this section shall be deemed to meet the*
61 *certification requirements established hereunder.*

62 *G. A decision by the Department to deny certification or to decertify a laboratory shall be deemed a*
63 *case decision as defined in the Administrative Process Act (§ 9-6.14:1 et seq.).*

64 *H. Without limiting other penalties available to the Department, laboratories found to be falsifying*
65 *any data or providing false information to support certification shall be decertified or denied*
66 *certification.*

67 *§ 10.1-1186.5. State Laboratory Certification Fund.*

68 *There is hereby created in the state treasury a special, nonreverting fund to be known as the State*
69 *Laboratory Certification Fund, hereafter referred to as "the Fund." The Fund shall be established on*
70 *the books of the Comptroller. All moneys collected pursuant to § 10.1-1186.4 shall be paid into the state*
71 *treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and*
72 *be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each*
73 *fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall*
74 *be used solely for the purposes set forth in § 10.1-1186.4 and shall be exempt from any indirect costs*
75 *assessed by the Department of Accounts. Expenditures and disbursements from the Fund shall be made*
76 *by the State Treasurer on warrants issued by the Comptroller upon written request signed by the*
77 *Director.*

78 **2. That § 2.1-429.01 of the Code of Virginia is repealed.**

79 **3. That the Department of Environmental Quality shall promulgate regulations to implement the**
80 **provisions of this act relating to the NELAC-based certification program, to be effective within 280**
81 **days of enactment of this act.**

82 **4. That the Department of Environmental Quality shall report to the Governor and the General**
83 **Assembly on or before December 1, 2001, on its progress in developing and implementing the**
84 **compliance-based and NELAC-based regulations, which report shall also identify the fee categories**
85 **established to support these programs and the adequacy of those fees.**