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HOUSE BILL NO. 439

House Amendments in [] - February 7, 2006

A BILL to amend the Code of Virginia by adding a section numbered 56-264.2, relating to entities operating certain sewage treatment facilities; composition of governing board; arbitration of issues; acquisition of facilities.

Patron Prior to Engrossment—Delegate Crockett-Stark

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 56-264.2 as follows:**

§ 56-264.2. Governing board of multistate entities operating certain sewage treatment facilities; arbitration of issues; condemnation of facilities.

A. As used in this section, "multistate entity" means any corporation, company, political subdivision, association, or other legal entity, without regard to whether such entity is a public utility or public service company, that engages in the provision of sewerage service to persons residing in the Commonwealth and to persons residing in an adjacent state and that operates a sewage treatment facility with a capacity of not less than five million gallons per day that is located in the Commonwealth, the construction or expansion of which treatment facility was financed primarily through the Virginia Revolving Loan Fund or a successor loan fund program administered by the Virginia Resources Authority or Department of Environmental Quality.

B. Notwithstanding any contrary provision of law, all powers of a multistate entity shall be exercised by or under the authority of, and all business and affairs of the multistate entity shall be managed under the direction of, a governing board, which may be titled a board of directors, board of trustees, or similar appellation. The governing board shall be comprised of (i) two members residing in the Commonwealth for each locality of the Commonwealth wherein the multistate entity provides sewerage treatment services and (ii) a number of members residing in the adjacent state that is equal to the number of members residing in the Commonwealth. The governing body of each locality of the Commonwealth wherein the multistate entity provides sewerage services shall appoint two individuals to the board, which individuals need not be residents of such locality. The terms of members of the board residing in the Commonwealth shall expire one year following their appointment; however, despite the expiration of such a member's term, the member shall continue to serve until his successor is elected and qualifies. Unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires a greater number for the transaction of particular business, a quorum of the governing board shall consist of a majority of the number of members prescribed by this subsection. If a quorum is present when a vote of the governing board is taken, the affirmative vote of a majority of members present is the act of the governing board unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires the vote of a greater number of members. Except as provided in this section, the provisions of the articles of incorporation, bylaws, charter, or other organic document of a multistate entity in effect prior to July 1, 2006, shall continue to apply with respect to the method of appointing the board members residing in the adjacent state and the duration of their terms, and to other matters relating to the governing board of such multistate entity, except that no amendment to the articles of incorporation, bylaws, charter, or other organic document of the multistate entity that contravenes any provision of this section shall be effective.

C. Upon the filing of a petition by not fewer than one-half of the members of the governing board of a multistate entity requesting the Commission to arbitrate an issue pertaining to the management of the business and affairs of the multistate entity that requires the affirmative vote of the members, upon which issue the governing board is deadlocked, then the Commission shall commence a proceeding to arbitrate the issue. The multistate entity and the non-petitioning members of the governing board shall be parties to the proceeding. With the petition for arbitration, the petitioners shall provide all relevant documentation concerning the issue on which it is alleged that the board is deadlocked and the positions of the petitioners and the other members of the governing board with respect to the issue. The Commission shall conduct the arbitration proceeding [~~as an adjudicatory proceeding~~] in accordance with its Rules of Practice and Procedure (5 VAC 5-20-10 et seq.). The Commission's consideration shall be limited to the issue in the petition. The Commission shall proceed promptly with the hearing and determination of the issue in controversy. The final order of the Commission shall be final and binding on the multistate entity and the governing board, unless notice of appeal to the Supreme Court is filed in the office of the Clerk of the Commission within 30 days after entry of the order appealed from, in

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59 *the manner provided in the rules of the Supreme Court of Virginia. If the Commission incurs additional*
60 *costs in conducting such an arbitration proceeding that cannot be recovered through the maximum levy*
61 *authorized pursuant to § 58.1-2660, the unrecoverable portion of the costs of the arbitration proceedings*
62 *shall be assessed against the multistate entity.*

63 *D. If the articles of incorporation, bylaws, charter, or other organic document of a multistate entity*
64 *in existence on July 1, 2006, does not comply with the requirements of subsection B by January 1,*
65 *[2007 2008], then the locality in the Commonwealth wherein the sewage treatment facility is located*
66 *shall be authorized to acquire, by exercise of the power of eminent domain if the governing body of the*
67 *locality deems it appropriate, the sewage treatment facility operated by the multistate entity, without*
68 *regard to whether such entity is the owner of the sewage treatment facility, and any related pipelines,*
69 *easements, and other property related to the provision of sewerage services that is located within the*
70 *locality, for the purpose of providing sewerage services to persons residing within the Commonwealth*
71 *[and the Bluestone watershed] .*