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HOUSE BILL NO. 2691

Offered January 10, 2007

Prefiled January 10, 2007

A *BILL to amend and reenact §§ 3.1-530.4, 32.1-25, 32.1-164, 32.1-176.4, 32.1-207, 32.1-246, and 35.1-22 of the Code of Virginia and to amend the Code of Virginia by adding in Article 10 of Chapter 6 of Title 32.1 a section numbered 32.1-248.3, relating to the Environmental Health Education and Training Fund; civil penalty.*

 Patron—Suit

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-530.4, 32.1-25, 32.1-164, 32.1-176.4, 32.1-207, 32.1-246, and 35.1-22 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 10 of Chapter 6 of Title 32.1 a section numbered 32.1-248.3 as follows:

§ 3.1-530.4. Powers and duties of State Health Commissioner and his agents; obstruction, etc., unlawful; inspections and fees.

A. The State Health Commissioner or his agents, pursuant to the regulations promulgated pursuant to § 3.1-530.1, shall issue permits to all plants which process and distribute Grade A market milk and Grade A market milk products. The State Health Commissioner or his agents shall also enforce the regulations adopted under § 3.1-530.1 in all such plants from the point of delivery at the plant to the consumer. They are empowered, in the performance of their duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder, pertaining to the processing and distribution of Grade A market milk, Grade A market milk products, ungraded milk products and those products manufactured in semblance to or as substitutes therefor in Grade A market milk and Grade A market milk products plants from the point of delivery at the plant to the consumer. It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner or his agents in the performance of their duties under this article or under the regulations adopted pursuant thereto.

B. *If the State Health Commissioner or his agents, in the performance of the duties outlined in subsection A, reasonably believe that conditions exist that do not comply with the regulations promulgated pursuant to § 3.1-530.1, or that pose an imminent threat to the health and safety of the public or employees of the plant, the Grade A permit holder shall be charged a fee of \$250 for a subsequent inspection of the plant to verify abatement of the conditions. Fees for subsequent inspections required by this section shall be charged each time the State Health Commissioner or his agents conduct such an inspection.*

Fees collected pursuant to this section shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

§ 32.1-25. Right of entry to inspect, etc.; fees; warrants.

A. Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Commissioner or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine compliance with the provisions of any law administered by the Board, Commissioner or Department, any regulations of the Board, any order of the Board or Commissioner or any conditions in a permit, license or certificate issued by the Board or Commissioner. This right of entry shall not apply to privileged communications pursuant to § 8.01-581.17. If the Commissioner or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

B. *Failure or refusal by any person to pay a fee for a subsequent inspection, charged pursuant to §§ 3.1-530.4, 32.1-164, 32.1-176.4, 32.1-207, 32.1-246, and 35.1-22, shall not be grounds to prevent the Commissioner or Department from conducting subsequent inspections as may be necessary to verify compliance with applicable laws and regulations or to protect the health and safety of the public. When an inspection fee has been charged to the holder of a license or permit issued by the Department, which is subject to an expiration date, and such fee has not been paid, the Department shall not reissue or renew the permit until all fees have been paid.*

§ 32.1-164. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

INTRODUCED

HB2691

59 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
60 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
61 sewage systems, and treatment works as they affect the public health and welfare. In discharging the
62 responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they
63 affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both
64 surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge
65 Elimination permit by the State Water Control Board, the Board of Health shall assume the
66 responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such
67 permits shall comply with the applicable regulations of the State Water Control Board and be registered
68 with the State Water Control Board.

69 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board
70 shall require and the Department shall conduct regular inspections of alternative discharging sewage
71 systems. The Board shall also establish requirements for maintenance contracts for alternative
72 discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an
73 alternative discharging sewage system, that the applicant present an executed maintenance contract. Such
74 contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System
75 permit issued by the State Water Control Board.

76 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and
77 disposal of sewage by onsite sewage systems and alternative discharging sewage systems. Such
78 regulations shall be designed to protect the public health and promote the public welfare and may
79 include, without limitation:

80 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,
81 installation, modification or operation of a sewerage system or treatment works except in those instances
82 where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

83 2. Criteria for the granting or denial of such permits.

84 3. Standards for the design, construction, installation, modification and operation of sewerage systems
85 and treatment works for permits issued by the Commissioner.

86 4. Standards governing disposal of sewage on or in soils.

87 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

88 (a) Public and private wells supplying water for human consumption,

89 (b) Lakes and other impounded waters,

90 (c) Streams and rivers,

91 (d) Shellfish waters,

92 (e) Ground waters,

93 (f) Areas and places of human habitation,

94 (g) Property lines.

95 6. Standards as to the adequacy of an approved water supply.

96 7. Standards governing the transportation of sewage.

97 8. A prohibition against the discharge of untreated sewage onto land or into waters of the
98 Commonwealth.

99 9. A requirement that such residences, buildings, structures and other places designed for human
100 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

101 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not
102 permitted through the then current sewage handling and disposal regulations, to treat and dispose of
103 sewage as effectively as approved methods.

104 11. Standards for inspections of and requirements for maintenance contracts for alternative
105 discharging sewage systems.

106 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a
107 requirement that the owner obtain a permit from the Commissioner prior to the construction, installation,
108 modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

109 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
110 systems.

111 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage
112 system permits.

113 15. Criteria for approved training courses, testing requirements, and application fees for persons
114 wishing to be authorized onsite soil evaluators.

115 16. Procedures for listing, removing from the list, and reinstating on the list those persons who have
116 successfully qualified to be authorized onsite soil evaluators.

117 C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an
118 alternative discharging sewage system permit with the Department. Funds received in payment of such
119 charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to
120 a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for

the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the State Water Control Board shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage system to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish a program for qualifying individuals as authorized onsite soil evaluators. The Board's program shall include, but not be limited to, approved training courses, written and field tests, application fees to cover the costs of the program, renewal fees and schedules, and procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil evaluators. To contain costs, the Board shall use or enhance the written and field tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil evaluator without completing the Board's training courses and taking the written and field tests. The Board shall furnish the list of authorized onsite soil evaluators to all local and district health departments.

H. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic or other onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the septic system or other onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within 20 working days of the application filing date when evaluations produced by authorized onsite soil evaluators are submitted as supporting documentation. The Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's

182 environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee
183 established by the Board for the letters' issuance and, upon application for a septic system permit or
184 other onsite sewage system permit, shall pay the permit application fee.

185 *1. The Board shall establish a uniform schedule of civil penalties for violations of regulations*
186 *promulgated pursuant to subsection B that are not remedied within 30 days after service of notice from*
187 *the Department. Civil penalties collected pursuant to this chapter shall be credited to the Environmental*
188 *Health Education and Training Fund established pursuant to § 32.1-248.3.*

189 *This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty*
190 *for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for*
191 *each additional violation. Each day during which the violation is found to have existed shall constitute a*
192 *separate offense. However, specified violations arising from the same operative set of facts shall not be*
193 *charged more than once in any 10-day period, and a series of specified violations arising from the same*
194 *operative set of facts shall not result in civil penalties exceeding a total of \$3,000. The Department may*
195 *pursue other remedies as provided by law; however, designation of a particular violation for a civil*
196 *penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that*
197 *contributes to or is likely to contribute to the pollution of public or private water supplies or the*
198 *contraction or spread of infectious, contagious, or dangerous diseases.*

199 *The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any*
200 *person summoned or issued a ticket for a scheduled violation may make an appearance in person or in*
201 *writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing*
202 *may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.*

203 *If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit*
204 *liability, the violation shall be tried in the general district court with jurisdiction in the same manner*
205 *and with the same right of appeal as provided for by law. In any trial for a scheduled violation, the*
206 *Department shall have the burden of proving by a preponderance of the evidence the liability of the*
207 *alleged violator. An admission of liability or finding of liability under this section shall not be deemed*
208 *an admission at a criminal proceeding.*

209 *This section shall not be interpreted to allow the imposition of civil penalties for activities related to*
210 *land development.*

211 *J. The Board shall establish a schedule of fees not to exceed \$500 per occurrence to be paid by the*
212 *owner of an onsite sewage system or alternative discharging sewage system when, during an inspection*
213 *of the system by the Department, the Department (i) identifies deficiencies that prevent the issuance of a*
214 *permit and requires a subsequent inspection by the Department to verify correction, or (ii) finds the*
215 *system is not being operated or maintained in accordance with a permit, laws, or applicable regulations*
216 *of the Board or State Water Control Board, and such operation poses a significant threat to the public*
217 *health and requires a subsequent inspection by the Department to confirm correction or abatement.*

218 *Fees for subsequent inspections required by this section shall be charged each time the Department*
219 *conducts such an inspection.*

220 *Fees collected by the Department pursuant to this section shall be credited to the Environmental*
221 *Health Education and Training Fund established pursuant to § 32.1-248.3.*

222 *§ 32.1-176.4. Powers and duties of Board and Department; regulations; fees; subsequent inspections.*

223 *A. The Board shall adopt regulations pertaining to the location and construction of private wells in*
224 *the Commonwealth. The Department shall enforce the provisions of this article and any rules and*
225 *regulations adopted pursuant thereto. However, for private wells located in the Counties of Fairfax,*
226 *Goochland, James City, Loudoun, Powhatan, and Prince William and the City of Suffolk, the governing*
227 *body of such county or city may, by ordinance, establish standards which are consistent with Board*
228 *standards pertaining to location and testing of water therefrom and more stringent than those adopted by*
229 *the Board pertaining to construction and abandonment. However, any county or city granted these*
230 *additional powers shall not require certification for drillers of monitoring wells and any recovery wells*
231 *associated with such monitoring wells.*

232 *B. A fee of \$40 shall be charged for filing an application for a private well construction permit with*
233 *the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for*
234 *deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General*
235 *Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of*
236 *this title. The Board, in its regulations, shall establish a procedure for the waiver of fees for persons*
237 *whose incomes are below the federal poverty guidelines established by the United States Department of*
238 *Health and Human Services or when the application is for replacement of a well. If the Department*
239 *denies the permit for land on which the applicant seeks to construct his principal place of residence,*
240 *then such fee shall be refunded to the applicant.*

241 *From such funds as are appropriated to the Department from the special fund, the Board shall*
242 *apportion a share to the local or district health departments to be allocated in the same ratios as*
243 *provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be*

transmitted to the local or district health departments on a quarterly basis.

C. The Board shall establish a schedule of fees not to exceed \$250 per occurrence to be paid by the owner of a private well when, during an inspection by the Department, the Department identifies deficiencies in construction or location of the well that prevent the issuance of a permit for the well and require a subsequent inspection by the Department to verify correction or completion. Fees for subsequent inspections required by this section shall be charged each time the Department conducts such an inspection.

Fees collected by the Department pursuant to this section shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

§ 32.1-207. Inspection; issuance of permit; permits nontransferable; subsequent inspections.

A. If, after inspection by the Commissioner or his designee, the Commissioner finds that the camp or the proposed operation of the camp for which an application is submitted pursuant to § 32.1-206 conforms or will conform to the provisions of this article and any applicable regulations, the Commissioner shall issue a permit for the operation of the camp. A permit shall not be transferable and shall expire on December 31 of each year.

B. If, following an inspection by the Commissioner or his designee, such conditions exist that do not comply with applicable laws and regulations and that pose an imminent threat to the health and safety of migrant workers, the operator of the migrant labor camp shall be charged a fee of \$250 for a subsequent inspection of the camp to verify abatement of such conditions. Fees for subsequent inspections required by this section shall be charged each time the Commissioner or his designee conducts such an inspection.

Fees collected pursuant to this section shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

§ 32.1-246. Marinas; subsequent inspections.

A. The Board is empowered and directed to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate. The provisions of this section shall be applicable to every such marina and place regardless of whether such establishment serves food.

B. The Commissioner shall enforce the provisions of this section and regulations adopted thereunder.

C. No such marina or place shall operate unless in accordance with this section and regulations adopted and promulgated thereunder.

D. Whenever the Commissioner shall have approved the plan for the sewerage facilities of a proposed marina for presentation to the Marine Resources Commission as provided in § 62.1-3, he shall have the power and duty to enforce compliance with such plan.

E. If, following an inspection by the Commissioner or his designee, such conditions exist that do not comply with the Board's regulations governing marinas or that pose an imminent threat to the health and safety of the public or employees of the marina, the operator shall be charged a fee of \$250 for a subsequent inspection of the marina to verify abatement of such conditions. Fees for subsequent inspections required by this section shall be charged each time the Commissioner or his designee conducts such an inspection.

Fees collected pursuant to this section shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

§ 32.1-248.3. Environmental Health Education and Training Fund.

There is hereby created the Environmental Health Education and Training Fund whose purpose is to receive moneys generated by the fees collected by the Department pursuant to §§ 3.1-530.4, 32.1-164, 32.1-176.4, 32.1-207, 32.1-246, and 35.1-22 and appropriated by the Commonwealth for the purpose of supporting, training, educating, and recognizing public- and private-sector individuals in all areas of Environmental Health, including Authorized Onsite Soil Evaluators; Department employees; restaurant operators and employees; migrant labor camp operators; hotel, summer camp and campground operators; contractors; and marina operators. The appropriate portion of each fee collected by the Department shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department by the General Assembly as it deems necessary. The fund may also be used, in the discretion of the Board, for research to improve public health and for protection of the environment.

§ 35.1-22. Periodic inspections; subsequent inspections.

A. The Commissioner shall cause each restaurant, summer camp, and campground in the Commonwealth to be inspected periodically, but not less often than annually, in accordance with applicable provisions of this title and the regulations of the Board. The Commissioner, as he deems appropriate, shall cause each hotel in the Commonwealth to be inspected in accordance with applicable provisions of this title and the regulations of the Board. If at any time the Commissioner finds that a

305 hotel, restaurant, summer camp, or campground is not in compliance with applicable provisions of this
306 title or regulations of the Board, he may revoke or suspend the license of that hotel, restaurant, summer
307 camp, or campground.

308 *B. If, following an inspection by the Commissioner or his designee, such conditions exist that do not*
309 *comply with the regulations governing hotels, restaurants, summer camps or campgrounds, or that pose*
310 *an imminent threat to the health and safety of the public or employees of the hotel, restaurant, summer*
311 *camp or campgrounds, the license holder or operator shall be charged a fee of \$250 for a subsequent*
312 *inspection to verify abatement of such conditions. Fees for subsequent inspections required by this*
313 *section shall be charged each time the Commissioner or his designee conducts such an inspection.*

314 *Fees collected pursuant to this section shall be credited to the Environmental Health Education and*
315 *Training Fund established pursuant to § 32.1-248.3.*