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HOUSE BILL NO. 3134

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare, and Institutions
on February 1, 2007)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact §§ 32.1-163, 32.1-164, and 54.1-2301 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-164.8 and by adding in Chapter 23 of Title 54.1 a section numbered 54.1-2303, relating to regulating the operation and maintenance of onsite sewage disposal systems.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163, 32.1-164, and 54.1-2301 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-164.8 and by adding in Chapter 23 of Title 54.1 a section numbered 54.1-2303 as follows:

§ 32.1-163. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Alternative onsite sewage system" means a sewage or wastewater treatment and dispersal system that is an alternative to a conventional onsite sewage system for which the Board may issue a permit authorizing construction and operation that includes different or additional components than those typically used in a conventional onsite system. This includes but is not limited to aerobic treatment units, media or packed bed filters, low pressure dispersal, spray irrigation dispersal or drip dispersal, mounds, privy, holding tanks for pump and haul, commercial, conditional, and experimental permitted systems.

"Authorized onsite soil evaluator" means a person possessing the qualifications specified by the Board who has successfully completed the course and testing to be authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils at the locations for traditional onsite sewage disposal systems.

"Conventional onsite sewage system" means a sewage or wastewater treatment system limited to building sewers; septic tanks; pump or siphon systems if applicable; conveyance lines; a distribution box; one or more header lines; and a subsurface dispersal system, where wastewater is released to the soil for final treatment and then into the environment. These systems may include effluent filters, pumps, and pump chambers, which will require additional maintenance.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, distribution boxes, or work requiring a construction permit and installer.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner, who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an alternative onsite sewage treatment system.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other

60 construction, devices and appliances appurtenant thereto, used for the collection and conveyance of
61 sewage to a treatment works or point of ultimate disposal.

62 "Subsurface drainfield" means a system installed within the soil and designed to accommodate treated
63 sewage from a treatment works.

64 "Transportation" means the vehicular conveyance of sewage.

65 "Treatment works" means any device or system used in the storage, treatment, disposal or
66 reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to
67 pumping, power and other equipment and appurtenances, septic tanks, and any works, including land,
68 that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of
69 residues or effluents resulting from such treatment.

70 § 32.1-164. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in
71 lieu of permits.

72 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
73 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
74 sewage systems, and treatment works as they affect the public health and welfare. In discharging the
75 responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they
76 affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both
77 surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge
78 Elimination permit by the State Water Control Board, the Board of Health shall assume the
79 responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such
80 permits shall comply with the applicable regulations of the State Water Control Board and be registered
81 with the State Water Control Board.

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

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

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

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

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

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

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

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

102 (b) Lakes and other impounded waters,

103 (c) Streams and rivers,

104 (d) Shellfish waters,

105 (e) Ground waters,

106 (f) Areas and places of human habitation,

107 (g) Property lines.

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

109 7. Standards governing the transportation of sewage.

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

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

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

117 11. Standards for inspections of and requirements for maintenance contracts for alternative
118 discharging sewage systems.

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

122 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
123 systems.

124 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage
125 system permits.

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

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

130 C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an
131 alternative discharging sewage system permit with the Department. Funds received in payment of such
132 charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to
133 a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for
134 the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the
135 Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

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

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

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

149 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of
150 alternative discharging sewage systems as may be required by the Board. The funds received in payment
151 of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems
152 necessary, to the Department for the purpose of carrying out the provisions of this section. However,
153 \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to
154 § 32.1-164.1:01.

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

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

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

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

177 H. The Board shall establish and implement procedures for issuance of letters recognizing the
178 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such
179 letters shall state, in language determined by the Office of the Attorney General and approved by the
180 Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system
181 design shall be required for issuance of such letter. The letter may be recorded in the land records of the
182 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 environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for a septic system permit or other onsite sewage system permit, shall pay the permit application fee.

1. The Board shall establish a program for the operation and maintenance of all onsite systems. The program shall require:

1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the operation permit;

2. Regulations, developed in consultation with the Board of Waterworks and Wastewater Works Operators, to establish licensure requirements for operators of alternative onsite sewage systems. Such regulations shall include requirements for (i) minimum education and training, (ii) relevant work experience, (iii) demonstrated knowledge and skill, and (iv) other criteria the Board deems necessary;

3. The sewage handler, accredited system inspector, or licensed operator to provide a report on the results of the site visit utilizing the web-based system required by this subsection. A fee of \$1 shall be paid by the sewage handler, accredited system inspector, or licensed operator at the time the report is filed. Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to § 32.1-164.8;

4. A statewide web-based reporting system to track the operation, monitoring, and maintenance requirements of each system, including its components. The system shall have the capability for pre-notification of operation, maintenance, or monitoring to the operator or owner. Sewage handlers, accredited system inspectors, and licensed operators shall be required to enter their reports onto the system. The Department of Health shall utilize the system to provide for compliance monitoring of operation and maintenance requirements throughout the state. The Commissioner shall consider readily available commercial systems currently utilized within the Commonwealth; and

5. Any additional requirements deemed necessary by the Board.

§ 32.1-164.8. Onsite Operation and Maintenance Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Onsite Operation and Maintenance Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection I of § 32.1-164 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of supporting the operation and maintenance of onsite systems, including but not limited to (i) training operators and (ii) supporting the reporting system required by subsection I of § 32.1-164. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by Commissioner.

§ 54.1-2301. Board for Waterworks and Wastewater Works Operators; membership; terms; duties.

A. The Board for Waterworks and Wastewater Works Operators shall consist of seven members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the Executive Director of the State Water Control Board, or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the Board, a currently employed wastewater works operator having a valid license of the highest classification issued by the Board, a faculty member of a state university or college whose principal field of teaching is management or operation of waterworks or wastewater works, a representative of an owner of a waterworks, and a representative of an owner of a wastewater works. No owner shall be represented on the Board by more than one representative or employee operator. The term of Board members shall be four years.

B. The Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and

245 protecting the water resources of the Commonwealth.

246 *C. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of*
247 *operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include*
248 *requirements for (i) minimum education and training, (ii) relevant work experience, (iii) demonstrated*
249 *knowledge and skill, and (iv) other criteria the Board deems necessary.*

250 *§ 54.1-2303. License required to operate alternative onsite sewage system.*

251 *No person shall operate an alternative onsite sewage system, as defined in § 32.1-163, without a*
252 *valid license issued by the Board for Waterworks and Wastewater Works Operators.*