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HOUSE BILL NO. 3134

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 15, 2007)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact §§ 32.1-163, 32.1-164, 54.1-300, 54.1-2300, 54.1-2301 and 54.1-2302 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-164.8, relating to regulating the operation and maintenance of onsite sewage systems.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163, 32.1-164, 54.1-300, 54.1-2300, 54.1-2301, and 54.1-2302 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 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" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"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 as the locations for traditional onsite sewage disposal systems.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

"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.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a treatment works.

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

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

62 "Transportation" means the vehicular conveyance of sewage.

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

68 § 32.1-164. Powers and duties of Board; regulations; fees; licensed onsite soil evaluators; letters in
69 lieu of permits.

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

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

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

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

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

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

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

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

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

100 (b) Lakes and other impounded waters,

101 (c) Streams and rivers,

102 (d) Shellfish waters,

103 (e) Ground waters,

104 (f) Areas and places of human habitation,

105 (g) Property lines.

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

107 7. Standards governing the transportation of sewage.

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

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

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

115 11. Standards for inspections of and requirements for maintenance contracts for alternative
116 discharging sewage systems.

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

120 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
121 systems.

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

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

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

C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the 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 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.

HG. 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 an 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

183 of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the
184 basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening
185 change in the soil or site conditions where the ~~septic system or other~~ onsite sewage system is to be
186 located. The Board, Commissioner, and the Department shall accept evaluations from ~~authorized~~ licensed
187 onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the
188 Board's established procedures for issuance of letters. The Department shall issue such letters within 20
189 working days of the application filing date when evaluations produced by authorized onsite soil
190 evaluators are submitted as supporting documentation. The Department shall not be required to do a
191 field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the
192 Department may conduct such field analyses as deemed necessary to protect the integrity of the
193 Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall
194 pay the fee established by the Board for the letters' issuance and, upon application for a ~~septic system~~
195 ~~permit or other~~an onsite sewage system permit, shall pay the permit application fee.

196 *H. The Board shall establish a program for the operation and maintenance of all onsite systems. The*
197 *program shall require:*

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

201 *2. The sewage handler, accredited system inspector, or licensed operator to provide a report on the*
202 *results of the site visit utilizing the web-based system required by this subsection. A fee of \$1 shall be*
203 *paid by the sewage handler, accredited system inspector, or licensed operator at the time the report is*
204 *filed. Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to*
205 *§ 32.1-164.8;*

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

213 *4. Any additional requirements deemed necessary by the Board.*

214 *§ 32.1-164.8. Onsite Operation and Maintenance Fund established.*

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

226 *§ 54.1-300. Definitions.*

227 *As used in this chapter unless the context requires a different meaning:*

228 *"Board" means the Board for Professional and Occupational Regulation.*

229 *"Certification" means the process whereby the Department or any regulatory board issues a certificate*
230 *on behalf of the Commonwealth to a person certifying that he possesses the character and minimum*
231 *skills to engage properly in his profession or occupation.*

232 *"Department" means the Department of Professional and Occupational Regulation.*

233 *"Director" means the Director of the Department of Professional and Occupational Regulation.*

234 *"Inspection" means a method of regulation whereby a state agency periodically examines the*
235 *activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is*
236 *carrying out his profession or occupation in a manner consistent with the public health, safety and*
237 *welfare.*

238 *"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a*
239 *license, authorizes a person possessing the character and minimum skills to engage in the practice of a*
240 *profession or occupation that is unlawful to practice without a license.*

241 *"Registration" means a method of regulation whereby any practitioner of a profession or occupation*
242 *may be required to submit information concerning the location, nature and operation of his practice.*

243 *"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land*
244 *Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology,*

Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators *and Onsite Sewage System Professionals*, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, and Virginia Board for Asbestos, Lead, and Home Inspectors.

§ 54.1-2300. Definitions.

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

"Board" means the Board for Waterworks and Wastewater Works Operators *and Onsite Sewage System Professionals*.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.

"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the State Water Control Board; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

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

A. The Board for Waterworks and Wastewater Works Operators *and Onsite Sewage System Professionals* shall consist of ~~seven~~¹¹ 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, *a licensed alternative onsite sewage system operator, a licensed alternative onsite sewage system installer, a licensed onsite soil evaluator, and one citizen member. The alternative onsite sewage system operator, alternative onsite sewage system installer, and onsite soil evaluator shall have practiced for at least five consecutive years immediately prior to appointment.* 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 *waterworks and wastewater works* 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 protecting the water resources of the Commonwealth.

C. *The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.*

D. *The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) licensed onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; and (e) other criteria the Board deems necessary.*

§ 54.1-2302. License required.

No person shall operate a waterworks or wastewater works, *or perform the duties of an onsite soil*

306 *evaluator, onsite sewage system installer, or onsite sewage system operator, without a valid license.*

307 **2. That of the appointments made to the Board for Waterworks and Wastewater Works Operator**
308 **and Onsite Sewage System Professionals pursuant to this act, the Governor shall appoint the**
309 **additional members for the following terms: one shall serve a two-year term, two shall serve a**
310 **three-year term, and one shall serve a four-year term. Thereafter, all such appointments shall be**
311 **for terms of four years, except that appointment to fill vacancies shall be for the unexpired term.**

312 **3. That the appointments made to the Board for Waterworks and Wastewater Works Operator**
313 **and Onsite Sewage System Professionals pursuant to this act shall not vote on any matters before**
314 **the Board, except matters related to alternative onsite sewage systems, until July 1, 2009.**

315 **4. That the provisions of this act shall become effective on July 1, 2009, except the provisions of**
316 **§ 54.1-2301, which shall become effective in due course.**