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## SENATE BILL NO. 1270

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 1, 2007)

(Patron Prior to Substitute—Senator Herring)

*A BILL to amend and reenact §§ 10.1-2117, 15.2-2157, and 32.1-164 of the Code of Virginia, relating to the certification of certain sewage disposal system maintenance workers.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-2117, 15.2-2157, and 32.1-164 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-2117. Definitions.

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

"Biological nutrient removal technology" means technology that will typically achieve at least an 8 mg/L total nitrogen concentration or at least a 1 mg/L total phosphorus concentration in effluent discharges.

"Chesapeake Bay Agreement" means the Chesapeake Bay Agreement of 2000 and any amendments thereto.

"Eligible nonsignificant discharger" means any publicly owned treatment works that is not a significant discharger but due to expansion or new construction is subject to a technology-based standard under § 62.1-44.19:15 or 62.1-44.19:16.

"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et seq.) of this chapter.

"Individual" means any corporation, foundation, association or partnership or one or more natural persons.

"Institutions of higher education" means any educational institution meeting the requirements of § 60.2-220.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.

"Nutrient removal technology" means state-of-the-art nutrient removal technology, biological nutrient removal technology, or other nutrient removal technology.

"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.

"Publicly owned treatment works" means a publicly owned sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage disposal decentralized onsite wastewater sewage system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation.

"Reasonable sewer costs" means the amount expended per household for sewer service in relation to the median household income of the service area as determined by guidelines developed and approved by the State Water Control Board for use with the Virginia Water Facilities Revolving Fund established pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.

"Significant discharger" means (i) a publicly owned treatment works discharging to the Chesapeake Bay watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million gallons per day or greater, (iii) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed, which is expected to be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater, or (iv) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million gallons per day or greater, which is expected to be in operation by 2010.

"State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L total nitrogen concentration or at least a 0.3 mg/L total phosphorus concentration in effluent discharges.

60 "State waters" means all waters on the surface or under the ground, wholly or partially within or  
61 bordering the Commonwealth or within its jurisdictions.

62 "Tributary strategy plans" means plans that are developed by the Secretary of Natural Resources  
63 pursuant to the provisions of the Chesapeake Bay Agreement for the tidal tributaries of the Chesapeake  
64 Bay and the tidal creeks and embayments of the western side of the Eastern Shore of Virginia. This  
65 term shall include any amendments to the tributary strategy plans initially developed by the Secretary of  
66 Natural Resources pursuant to the Chesapeake Bay Agreement.

67 "Water Quality Improvement Grants" means grants available from the Fund for projects of local  
68 governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in  
69 tributary strategy plans or applicable regulatory requirements or (ii) to achieve other water quality  
70 restoration, protection or enhancement benefits.

71 § 15.2-2157. Decentralized onsite wastewater sewage systems when sewers not available; civil  
72 penalties.

73 A. Any locality may require the installation, maintenance and operation of, regulate and inspect  
74 ~~septic tanks or other means of disposing of sewage~~*decentralized onsite wastewater sewage systems* when  
75 sewers or sewerage disposal facilities are not available; without liability to the owner thereof, may  
76 prevent the maintenance and operation of septic tanks or such other means of disposing of sewage when  
77 they contribute or are likely to contribute to the pollution of public or private water supplies or the  
78 contraction or spread of infectious, contagious and dangerous diseases; and may regulate and inspect the  
79 disposal of human excreta.

80 B. Any locality that (i) has a record of the location of nonconventional *decentralized wastewater*  
81 sewage disposal systems; (ii) has notified owners of their maintenance responsibility for such systems;  
82 and (iii) has a method to identify property transfer may adopt an ordinance establishing a uniform  
83 schedule of civil penalties for violations of specified provisions for the operation and maintenance of  
84 nonconventional sewage disposal systems, as defined in this section, that are not abated or remedied  
85 within 30 days after receipt of notice of violation from the local health director or his designee. No civil  
86 action authorized under this section shall proceed while a criminal action is pending.

87 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty  
88 for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not  
89 more than \$150 for each additional summons. Each day during which the violation is found to have  
90 existed shall constitute a separate offense. However, specified violations arising from the same operative  
91 set of facts shall not be charged more frequently than once in any 10-day period, and a series of  
92 specified violations arising from the same operative set of facts shall not result in civil penalties  
93 exceeding a total of \$3,000. If the violation is not abated after the imposition of the maximum fine, the  
94 locality may pursue other remedies as provided by law. Designation of a particular ordinance violation  
95 for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation  
96 that contributes to or is likely to contribute to the pollution of public or private water supplies or the  
97 contraction or spread of infectious, contagious, and dangerous diseases.

98 The local health director or his designee may issue a civil summons ticket as provided by law for a  
99 scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an  
100 appearance in person or in writing by mail to the department of finance or the treasurer of the locality  
101 prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit  
102 liability, and pay the civil penalty established for the offense charged.

103 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit  
104 liability, the violation shall be tried in the general district court in the same manner and with the same  
105 right of appeal as provided for by law. In any trial for a scheduled violation, the locality shall have the  
106 burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission  
107 of liability or finding of liability under this section shall not be deemed an admission at a criminal  
108 proceeding.

109 This section shall be not interpreted to allow the imposition of civil penalties for activities related to  
110 land development.

111 For purposes of this section "nonconventional sewage disposal system" means any Type II or Type  
112 III system, as defined in 12 VAC 5-610-250 of the Sewage Handling and Disposal Regulations, holding  
113 tanks as referenced in 12 VAC 5-610-598 through 12 VAC 5-610-599.3 of the Sewage Handling and  
114 Disposal Regulations, and residential discharging wastewater treatment systems as referenced in 12 VAC  
115 5-640-10 et seq. of the Alternative Discharging Regulations for Single Family Homes.

116 § 32.1-164. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in  
117 lieu of permits.

118 As used in this section, unless context requires otherwise:

119 "Conventional decentralized onsite wastewater treatment system" means a system consisting of only  
120 an anaerobic septic tank treatment system with gravity or simple pump conveyance to a gravity  
121 distributed subsurface drainfield.

*"Decentralized onsite wastewater treatment system" means any system relying on natural processes or mechanical components to collect, treat, or reuse and disperse effluent or sewage on or below the ground surface, or which results in a point source discharge, onto property owned by the individual or entity, or onto property with a valid easement in perpetuity to serve the decentralized onsite wastewater treatment system.*

*"Non-conventional decentralized onsite wastewater treatment system" means an onsite wastewater treatment system that is not a conventional onsite wastewater treatment system.*

*"Proprietary, pre-engineered system" means a decentralized onsite wastewater treatment system that has been designed and evaluated by a professional engineer licensed in Virginia and has a design manual such that no additional engineering is necessary.*

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by ~~onsite sewage~~ *decentralized onsite wastewater treatment systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare. The Board shall also have supervision and control over the maintenance, inspection, and reuse of non-conventional decentralized onsite wastewater treatment systems and proprietary, pre-engineered systems as they affect the public health and welfare.* In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

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

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage by ~~onsite sewage~~ *decentralized onsite wastewater treatment systems and alternative discharging sewage systems and the maintenance, inspection, and reuse of non-conventional decentralized onsite wastewater treatment systems and proprietary, pre-engineered systems.* Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

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

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

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

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

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

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

(b) Lakes and other impounded waters,

(c) Streams and rivers,

(d) Shellfish waters,

(e) Ground waters,

(f) Areas and places of human habitation,

(g) Property lines.

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

7. Standards governing the transportation of sewage.

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

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

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

11. Standards for inspections of and requirements for maintenance contracts for alternative

183 discharging sewage systems *or other decentralized onsite wastewater treatment systems.*

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

187 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage  
188 systems.

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

191 15. Criteria for approved training courses, testing requirements, and application fees for persons  
192 wishing to be authorized onsite soil evaluators *or to install, maintain or operate non-conventional*  
193 *decentralized onsite wastewater treatment systems and proprietary, pre-engineered systems.*

194 16. Procedures for listing, removing from the list, and reinstating on the list those persons who have  
195 successfully qualified to be authorized onsite soil evaluators *and those persons who install, inspect,*  
196 *maintain or operate non-conventional and decentralized onsite wastewater treatment systems and*  
197 *proprietary, pre-engineered systems.*

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

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

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

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

217 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of  
218 alternative discharging sewage systems as may be required by the Board. The funds received in payment  
219 of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems  
220 necessary, to the Department for the purpose of carrying out the provisions of this section. However,  
221 \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to  
222 § 32.1-164.1:01.

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

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

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

234 G. The Board shall *cooperate with the Department of Professional and Occupational Regulation to*  
235 *establish a program for qualifying individuals as authorized onsite soil evaluators and those persons who*  
236 *install, inspect, or operate and maintain non-conventional decentralized onsite wastewater sewage*  
237 *systems and proprietary, pre-engineered systems.* The Board's program shall include, but not be limited  
238 to, approved training courses, written and field tests, application fees to cover the costs of the program,  
239 renewal fees and schedules, and procedures for listing, removing from the list, and reinstating  
240 individuals as authorized onsite soil evaluators. To contain costs, the Board, *in conjunction with the*  
241 *Department of Professional and Occupational Regulation,* shall use or enhance the ~~written and field~~  
242 ~~tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators~~  
243 ~~the powers and duties of existing regulatory boards within the Department of Professional and~~  
244 ~~Occupational Regulation as the means for qualifying individuals as authorized onsite soil evaluators and~~

those persons who install, inspect, or operate and maintain non-conventional decentralized onsite wastewater sewage systems and proprietary, pre-engineered systems. Further, the Board shall collaborate with the community college system and other stakeholders in developing and providing training and testing. 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 and those persons who install, inspect, or operate and maintain non-conventional decentralized onsite wastewater sewage systems and proprietary, pre-engineered systems 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 decentralized onsite wastewater 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 decentralized onsite wastewater 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 decentralized onsite wastewater 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 decentralized onsite wastewater 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 decentralized onsite wastewater 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 decentralized onsite wastewater sewage system permit, shall pay the permit application fee.

I. The Board shall promulgate regulations governing the requirements for maintaining non-conventional decentralized onsite wastewater treatment systems and proprietary, pre-engineered systems. -