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HOUSE BILL NO. 2551

Offered January 20, 2009

A BILL to amend and reenact § 32.1-163.6 of the Code of Virginia, relating to onsite treatment works designed by engineers.

Patron—Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-163.6 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-163.6. Professional engineering of onsite treatment works.

A. Notwithstanding other provisions of this chapter; for purposes of permit approval, the Board, Commissioner, and Department of Health shall accept treatment works designs from submitted by individuals licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1. The designs shall (i) be compliant with standard engineering practice and performance requirements established by the Board and those horizontal setback requirements necessary to protect the public health and the environment; and (ii) reflect that degree of skill and care ordinarily exercised by licensed members of the engineering profession practicing at the time of performance.

B. For purposes of permit review and approval, submissions for treatment works designs proposed under this section shall:

1. Be certified as complying with the Board's regulations implementing this chapter; or

2. Be subject to the following requirements:

a. The design proposal shall comply with those performance requirements, effluent quality requirements, and horizontal setback requirements established by the Board that are necessary to protect public health and the environment. Additionally, when the Commissioner finds that new or unconventional methods, processes, equipment, or systems have been tested and have performed satisfactorily, the proposed design shall reflect the Commissioner's findings;

b. The design proposal shall include a form designed by the Department that shall be signed by both the designing engineer and the owner and contain (i) an acknowledgement that the proposed treatment works design does not meet the Board's regulations implementing this chapter and is instead based upon the engineer's professional judgment; (ii) a list of all variances from the Board's regulations implementing this chapter and the engineer's justification for each variance based on accepted principles of engineering; (iii) any known limitations of the treatment works design; (iv) an abatement plan if the treatment works is later deemed non-compliant; (v) a reference to and description of any applicable treatment works equipment warranties; (vi) a statement that an operation and maintenance manual for the treatment works has been provided to the owner; and (vii) disclosure as to whether the designing engineer is covered by professional liability insurance, bond, or any other type of insurance;

c. Following installation, the owner shall have the site of the treatment works inspected and monitored through performance sampling of effluent quality or groundwater, in a manner and frequency determined by the Department to be sufficient to demonstrate that the system is functioning as designed, that the public health and the environment are protected, and there is no resulting pollution of the groundwater. The engineer shall maintain a current list of all installations made under this provision and all related field reports and field monitoring data. Engineers shall make this information available to the Department upon request; and

d. The engineer shall submit a complete copy of the design proposal to the owner at the same time it is submitted for permit review.

C. The Department may conduct such review of the work and field analysis treatment works designed under this section as deemed necessary to protect the public health and integrity of the Commonwealth's environment, and to prevent pollution of the groundwater.

D. Within 2430 calendar days from the date of application for treatment works sized at 1,000 gallons per day or smaller, and within 60 calendar days from the date of application for treatment works sized at more than 1,000 gallons per day, the Department shall (i) issue the requested approval, or (ii) set forth in writing the specific reasons for denial, or (iii) set forth in writing specific additional information that is needed to review the application.

E. The Department shall establish an engineering design review panel to review the Department's decision to disapprove an onsite sewage system design. The Commissioner shall appoint four individuals licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite sewage systems to serve on the engineering design review panel with (i) one representing the

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59 Department of Health, (ii) one representing the Department of Environmental Quality, (iii) one
60 representing the Virginia Society of Professional Engineers, and (iv) one representing the American
61 Council of Engineering Companies of Virginia. If a state agency is unable to provide a representative in
62 accordance with this subsection, the Commissioner shall appoint another individual licensed as a
63 professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite
64 sewage systems. The members of the design review panel shall appoint a member to serve as Chairman.
65 The design review panel shall be designated a subordinate, as defined in § 2.2-4001, and shall meet as
66 necessary.

67 *EF.* When the Department denies an application pursuant to subsection *CD*, the owner may appeal
68 that decision in accordance with § 32.1-164.1. Alternatively, the owner, or the professional engineer
69 responsible for an onsite sewage system design with the owner's written consent, may request an
70 informal fact-finding conference before the engineering design review panel established in subsection
71 *DE*. The request must (i) be in writing, (ii) be received by the Commissioner within 30 days of the
72 professional engineer's receipt of the Department's denial, and (iii) cite the reason or reasons for the
73 request. The informal fact-finding conference shall be held within 45 calendar days of the request. The
74 proceedings of the engineering design review panel shall be governed by the provisions of the
75 Administrative Process Act (§ 2.2-4000 et seq.). Within 30 days following its receipt of the engineering
76 review panel's written recommendations, the Department shall consider the recommendations of the
77 engineering design review panel and approve the application or re-affirm its denial.

78 *FG.* When the Department denies an application following review by the engineering design review
79 panel, the owner may appeal that decision in accordance with § 32.1-164.1.

80 *GH.* This section shall not be construed to require an owner to seek review by the engineering design
81 review panel before appealing a permit denial pursuant to § 32.1-164.1.

82 *HI.* This section shall not be construed to prohibit any locality from adopting or enforcing any
83 ordinance duly enacted pursuant to Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2.