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HOUSE BILL NO. 132

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact §§ 15.2-2157 and 32.1-163.6 of the Code of Virginia, relating to onsite sewage systems.

Patrons—Pollard and Kory

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2157 and 32.1-163.6 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2157. Onsite sewage systems when sewers not available; civil penalties.

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

B. Any locality that (i) has a record of the location of alternative onsite sewage systems; (ii) has notified owners of their maintenance responsibility for such systems; and (iii) has a method to identify property transfer may adopt an ordinance establishing a uniform schedule of civil penalties for violations of specified provisions for the operation and maintenance of alternative onsite sewage systems, as defined in § 32.1-163, that are not abated or remedied within 30 days after receipt of notice of violation from the local health director or his designee. No civil action authorized under this section shall proceed while a criminal action is pending.

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

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

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

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

C. When sewers or sewerage disposal facilities are not available, a locality shall not prohibit the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating, *and any maintenance standards and requirements adopted pursuant to subsection D.*

D. ~~Except for~~ *localities with boundaries including impaired waters, as defined in § 62.1-44.19:4, no* locality shall ~~not~~ require maintenance standards and requirements for alternative onsite sewage systems that exceed those allowed under or established by the State Board of Health pursuant to § 32.1-164.

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59 E. The State Health Commissioner shall require, as a precondition to the issuance of an alternative
60 onsite sewage system permit pursuant to § 32.1-164 to serve a residential structure, that the property
61 owner record an instrument identifying by reference the applicable maintenance regulations for each
62 component of the system in the land records of the clerk of the circuit court in the jurisdiction where all
63 or part of the site or proposed site of the onsite sewage system is to be located, which shall be
64 transferred with the title to the property upon the sale or transfer of the land that is the subject of the
65 permit.

66 § 32.1-163.6. Professional engineering of onsite treatment works.

67 A. Notwithstanding other provisions of this chapter, for purposes of permit approval, the Board,
68 Commissioner, and Department of Health shall accept treatment works designs from individuals licensed
69 as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1. The designs shall (i)
70 be compliant with standard engineering practice and performance requirements established by the Board
71 and those horizontal setback requirements necessary to protect the public health and the environment, (ii)
72 reflect that degree of skill and care ordinarily exercised by licensed members of the engineering
73 profession practicing at the time of performance, (iii) be appropriate for the particular soil characteristics
74 of the site, and (iv) ensure that the treatment works will meet or exceed the discharge, effluent, and
75 surface and ground water quality standards for systems otherwise permitted pursuant to the regulations
76 implementing this chapter.

77 B. The Department may conduct such review of the work and field analysis as deemed necessary to
78 protect the public health and integrity of the Commonwealth's environment. *The Department shall not*
79 *accept any application for treatment works: (i) located in a wetland, as defined in § 28.2-1300, (ii)*
80 *setback less than 50 feet from any impaired waters, as defined in § 62.1-44.19:4, (iii) within one foot*
81 *vertically of any groundwater resource, or (iv) discharging directly into a groundwater resource if such*
82 *system is located in the watershed of any impaired waters. For the purposes of this section,*
83 *"groundwater resource" shall include the seasonal water table.*

84 C. Within 21 calendar days from the date of application for treatment works sized at 1,000 gallons
85 per day or smaller, and within 60 calendar days from the date of application for treatment works sized
86 at more than 1,000 gallons per day, the Department shall (i) issue the requested approval, or (ii) set
87 forth in writing the specific reasons for denial.

88 D. The Department shall establish an engineering design review panel to review the Department's
89 decision to disapprove an onsite sewage system design. The Commissioner shall appoint four individuals
90 licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise
91 in onsite sewage systems to serve on the engineering design review panel with (i) one representing the
92 Department of Health, (ii) one representing the Department of Environmental Quality, (iii) one
93 representing the Virginia Society of Professional Engineers, and (iv) one representing the American
94 Council of Engineering Companies of Virginia. If a state agency is unable to provide a representative in
95 accordance with this subsection, the Commissioner shall appoint another individual licensed as a
96 professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite
97 sewage systems. The members of the design review panel shall appoint a member to serve as Chairman.
98 The design review panel shall be designated a subordinate, as defined in § 2.2-4001, and shall meet as
99 necessary.

100 E. When the Department denies an application pursuant to subsection D, the owner may appeal that
101 decision in accordance with § 32.1-164.1. Alternatively, the owner, or the professional engineer
102 responsible for an onsite sewage system design with the owner's written consent, may request an
103 informal fact-finding conference before the engineering design review panel established in subsection D.
104 The request must (i) be in writing, (ii) be received by the Commissioner within 30 days of the
105 professional engineer's receipt of the Department's denial, and (iii) cite the reason or reasons for the
106 request. The informal fact-finding conference shall be held within 45 calendar days of the request. The
107 proceedings of the engineering design review panel shall be governed by the provisions of the
108 Administrative Process Act (§ 2.2-4000 et seq.). Within 30 days following its receipt of the engineering
109 review panel's written recommendations, the Department shall consider the recommendations of the
110 engineering design review panel and approve the application or re-affirm its denial.

111 F. When the Department denies an application following review by the engineering design review
112 panel, the owner may appeal that decision in accordance with § 32.1-164.1.

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

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

117 I. All treatment works designs permitted pursuant to this section shall comply with operation,
118 maintenance, and monitoring requirements as set forth in regulations implementing this chapter.