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HOUSE BILL NO. 1738

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact § 62.1-44.38 of the Code of Virginia, relating to requiring the reporting of water withdrawals from surface waters and groundwater; penalty.

Patrons—Bulova, Kory, Morgan and Scott, J.M.; Senator: Ticer

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.38 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance; establishment of Fund.

A. The Board shall prepare plans and programs for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of this Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. In preparing river basin plan and program reports enumerated in subsection A ~~of this section~~, the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

C. The Board ~~may~~ *shall*, by regulation *and upon written notice*, require each water user withdrawing surface or subsurface water or both during each year to register *and report*, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for all other users.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E of this section. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A ~~of this section~~ recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B ~~of this section~~.

F. In addition to the preparation of plans called for in subsection A ~~of this section~~, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to

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59 facilitate a specific situation, applications for federal grants or permits, or other such planning activities
60 to facilitate intergovernmental cooperation and coordination.

61 *G. Subject to the completion of public comment requirements described in subsection H, the Board*
62 *may enforce the provisions of this section utilizing all applicable due process procedures under*
63 *§§ 10.1-1186, 62.1-44.15, and 62.1-44.24, and subsection (a) of § 62.1-44.32. If the Board finds that a*
64 *person required to register and report water withdrawal data under subsection C and the regulations*
65 *adopted pursuant to this subsection has failed to submit the required report by the date established by*
66 *the Board, it shall notify such person in writing of his failure to report. If the person fails to report*
67 *within 30 days after the date of such notice of failure to report, the Board shall issue a second notice*
68 *by certified mail of the failure to report. If the person fails to report within 60 days after the date of the*
69 *certified notice of a failure to report, such person shall be subject to a civil penalty not to exceed*
70 *\$1,000 for each violation. Each month of violation shall constitute a separate offense. Civil penalties*
71 *may be assessed by a court in an action brought by the Board. With the consent of any person in*
72 *violation of this subsection, the Board may provide in a special order issued by the Board against the*
73 *person, the payment of civil charges and the performance of injunctive relief. All civil penalties and*
74 *charges collected shall be deposited in the Water Supply Plan Fund established in subsection I.*

75 *H. The Board shall develop and provide an opportunity for public comment on guidelines and*
76 *procedures that contain specific criteria for calculating the appropriate penalty for each violation based*
77 *upon the severity of the violation, the extent of any potential or actual environmental harm, the*
78 *compliance history of the facility or person, and the ability to pay.*

79 *I. There is hereby established in the state treasury a special nonreverting fund to be known as the*
80 *Water Supply Plan Fund (the Fund). The Fund shall consist of the civil penalties and civil charges*
81 *collected by the Board pursuant to subsection G. No part of the Fund, either principal or interest, shall*
82 *revert to the general fund. The Fund shall be administered by the Director and shall be used solely for*
83 *administration of the water supply planning responsibility of the Department of Environmental Quality.*