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## SENATE BILL NO. 442

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 2, 2012)

(Patron Prior to Substitute—Senator Obenshain)

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

**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 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 *applicable to public and private drinking water sources, shellfish waters, and karst-related surface features* necessary to protect the public health and the environment, (ii) reflect that degree of skill and care ordinarily exercised by licensed members of the engineering profession practicing at the time of performance, (iii) be appropriate for the particular soil characteristics of the site, and (iv) ensure that the treatment works will meet or exceed the discharge, effluent, and surface and ground water quality standards for systems otherwise permitted pursuant to the regulations implementing this chapter.

B. The Department may conduct such review of the work and field analysis as deemed necessary to protect the public health and integrity of the Commonwealth's environment.

C. Within 21 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 *based on the requirements in subsection A*.

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

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

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

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

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

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

1. For alternative onsite systems permitted at 1,000 gallons per day or less, the required inspection

60 and monitoring frequency shall be specified by the design engineer, but shall be no less than once every  
61 two years. Effluent or groundwater sampling shall not be required unless a notice of alleged violation is  
62 issued.

63 2. For alternative onsite systems permitted at more than 1,000 gallons per day, the required  
64 inspection and monitoring frequency shall be specified by the design engineer, but shall be no less than  
65 once per 730,000 gallons based on an annualized permitted capacity. Effluent or groundwater sampling  
66 frequency shall be a minimum of once per four required inspection and monitoring events.

67 3. For alternative discharging systems, the required inspection, monitoring, and sampling frequency  
68 shall be specified by the design engineer, but shall be no less than the minimum requirements of the  
69 general permit for domestic sewage discharges of less than or equal to 1,000 gallons per day.

70 J. Nothing in this section shall authorize the Board, Commissioner, or Department of Health, directly  
71 or indirectly, to regulate, define, restrict, authorize, or expand the meaning or legal application of the  
72 terms "practice of engineering" as defined pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 or  
73 "standard engineering practice" as used in this chapter.

74 K. For purposes of this chapter, "performance requirement" means an objective standard that can be  
75 expressed as a numeric limit for effluent, groundwater or surface water quality, or a narrative  
76 description of desired performance.