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HOUSE BILL NO. 1065

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend and reenact § 62.1-266 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-266.1, relating to establishment of a ground water conservation incentive program.

Patron—Jones

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-266 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-266.1 as follows:

§ 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten 10 years, except when a longer term is established under § 62.1-266.1. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten 10 years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-266.1. Ground water conservation incentive program established.

A. The Board shall implement a voluntary ground water conservation incentive program as provided in this section. The purpose of this program is to provide incentives to participating permittees to

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59 encourage and support (i) a substantial reduction in reliance upon ground water or use of equivalent
60 ground water conservation options, (ii) transition to alternative sources, or (iii) development of
61 necessary infrastructure.

62 B. Each permittee that agrees by October 1, 2016, to either (i) accept a 50 percent reduction in its
63 authorized withdrawal amount from the amount authorized by its permit or certificate in effect as of
64 January 1, 2016, or (ii) achieve a comparable level of conservation by any combination of authorized
65 withdrawal amount reduction and alternative options approved by the Board shall qualify for a water
66 supply transition period pursuant to subsection C and a regulatory certainty period pursuant to
67 subsection D. The permittee's agreement shall be made on a commitment form provided by the Board
68 solely for the purpose of documenting the permittee's participation based on the qualification criteria of
69 this subsection. The purpose of the qualification criteria is solely to establish the permittee's eligibility
70 for the incentive program, and such criteria shall not be construed to limit the Board's authority to
71 establish authorized withdrawal amounts in higher or lower amounts by permit.

72 C. A permit issued pursuant to this incentive program shall establish a practicable transition period
73 not to exceed 15 years, taking into account (i) the feasibility, cost, and affordability of securing any
74 alternative source; (ii) the feasibility, cost, and affordability of constructing any necessary
75 infrastructure; (iii) existing investments in and outstanding public debt for ground water-related
76 infrastructure; and (iv) other relevant factors. During this transition period, (a) the authorized
77 withdrawal amount as of January 1, 2016, or such other amount established by the Board in the permit
78 ,including any phased implementation of the overall reduction, shall apply and (b) the permittee shall
79 take all necessary actions to achieve transition in accordance with a plan and schedule developed by
80 the permittee and approved by the Board as a requirement of the permit. Upon the conclusion of the
81 transition period, the reduced withdrawal amount shall apply.

82 D. Notwithstanding any other provision of this chapter, each permittee that agrees to the
83 qualification criteria under subsection B shall be entitled to a regulatory certainty period of 20 years
84 during which the withdrawal amount shall not be reduced further, except in the limited circumstances
85 under subsection F. The regulatory certainty period shall begin at the expiration of the transition
86 period.

87 E. For each permittee that agrees to the qualification criteria under subsection B, the Board shall
88 issue a permit providing the incentives set forth in this section. The term of such permit shall be for a
89 fixed period through the end date of the regulatory certainty period.

90 F. The withdrawal amount, transition period, or regulatory certainty period established pursuant to
91 this section shall not be amended or revoked by the Board except (i) in exceptional circumstances as
92 warranted under subsection E of § 62.1-266, (ii) in the case of an industrial or commercial facility
93 permittee that closes its facility or substantially reduces its operations, or (iii) if the permittee consents
94 to such reduction.

95 G. Authorized temporary uses for drought relief or emergency situations shall be excluded from any
96 determinations regarding attainment of the qualification criteria applicable under this section.

97 H. For any permit issued between January 1, 2012, and July 1, 2016, with a reduction of 50 percent
98 or more in its authorized withdrawal amount from the amount authorized by the permit or certificate in
99 effect as of January 1, 2012, or with conditions placed upon its authorized withdrawals to limit such
100 withdrawals to times of declared water shortage conditions or drought or in the event of emergency,
101 upon the request of the permittee the Board shall modify the permit to add a regulatory certainty period
102 consistent with subsection D and conform the term in accordance with subsection E. The process for
103 such revisions shall be those applied by the Board to minor modifications.

104 I. As part of the plan and schedule required by subsection C, the permittee may propose and the
105 Board shall consider, without limitation, any alternative options recommended by the Eastern Virginia
106 Groundwater Management Advisory Committee established thereunder, including water reclamation and
107 reuse, ground water recharge, desalination, or surface water options. With the approval of the Board,
108 the permittee may modify any previously approved plan and schedule pursuant to subsection C to use or
109 participate in any alternative options recommended by such committee in its report required under
110 subsection C of § 62.1-256.1. In connection with any such plan and schedule modification, the permittee
111 may also apply for, and DEQ shall give priority consideration to, a permit modification to restore the
112 permittee's previous authorized withdrawal amount.