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HOUSE BILL NO. 2063

Offered January 9, 2019

Prefiled January 7, 2019

A BILL to amend and reenact §§ 62.1-10 through 62.1-13 and 62.1-266 of the Code of Virginia, relating to ground water withdrawal; waste.

Patron—Carr

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-10 through 62.1-13 and 62.1-266 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-10. Definitions.

As used in this chapter, the following terms shall have the meanings respectively ascribed to them unless the context requires a different meaning:

(a) "Water" includes all waters, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.

(b) "Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Ground water management area" means a geographically defined groundwater area declared by the Board pursuant to its authority under Chapter 25 (§ 62.1-254 et seq.).

"Human consumption" means drinking, food preparation, dishwashing, bathing, showering, hand washing, teeth brushing, and maintaining oral hygiene.

"Surface water" means any water in the Commonwealth, except ground water.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Water" means all waters, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

§ 62.1-11. Waters declared natural resource; state regulation and conservation; limitations upon right to use.

A. Such waters are a natural resource which that should be regulated by the Commonwealth.

B. The regulation, control, development, and use of waters for all purposes beneficial to the public are within the jurisdiction of the Commonwealth which, in the exercise of its police powers, may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

C. The changing wants and needs of the people of the Commonwealth may require the water resources of the Commonwealth to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the Commonwealth and their interest in the reasonable and beneficial use thereof. When the Board determines that surface water is reasonably available for use for purposes other than human consumption, the use of ground water in a ground water management area, other than from the surficial aquifer, shall be deemed to constitute waste.

D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.

E. The right to the use of water or to the flow of water in or from any natural stream, lake, or other watercourse in this the Commonwealth is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

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59 F. The quality of state waters is affected by the quantity of water and it is the intent of the
60 Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses
61 and public water supplies for human consumption.

62 **§ 62.1-12. Valid uses not affected; chapter not applicable to proceedings determining rights.**

63 Nothing in this chapter shall operate to affect any existing valid use of such *surface* waters or
64 interfere with such uses hereafter acquired, nor shall it be construed as applying to the determination of
65 *surface water* rights in any proceeding now pending or hereafter instituted.

66 **§ 62.1-13. Construction with reference to rights, etc., of counties, cities and towns.**

67 Nothing in this chapter contained shall be construed as a declaration of policy of the Commonwealth
68 to divest any county, city or town of its title or right to any *surface* water or of its powers conferred by
69 law with respect to the disposition thereof; nor shall anything in this chapter be construed to authorize
70 the impairment of any contract to which such county, city or town is a party, or to obligate any ~~county,~~
71 ~~city or town~~ *locality* to appropriate or expend any funds. The purpose of this chapter is to recognize the
72 public use to which such water is devoted.

73 **§ 62.1-266. Ground water withdrawal permits.**

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

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

78 C. ~~At~~ *Each* ground water withdrawal ~~permits permit~~ issued by the Board under this chapter shall
79 have a fixed term not to exceed 15 years. The term of a ground water withdrawal permit issued by the
80 Board shall not be extended by modification beyond the maximum duration, and the permit shall expire
81 at the end of the term unless a complete application for a new permit has been filed in a timely manner
82 as required by the regulations of the Board, and the Board is unable, through no fault of the permittee,
83 to issue a new permit before the expiration date of the previous permit.

84 D. ~~Renewed~~ *A renewed* ground water withdrawal ~~permits permit~~ shall be for a withdrawal amount
85 that includes such savings as can be demonstrated to have been achieved through water conservation,
86 provided that a beneficial use of the permitted ground water can be demonstrated for the ~~following~~
87 *succeeding* permit term.

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

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

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

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

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

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

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

114 *H. Notwithstanding any other provision of this chapter, no ground water withdrawal permit shall be*
115 *issued to authorize the withdrawal of ground water that constitutes waste pursuant to the provisions of*
116 *§ 62.1-11.*