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HOUSE BILL NO. 2064

Offered January 9, 2019

Prefiled January 7, 2019

A BILL to amend and reenact §§ 62.1-44.36, 62.1-44.44, and 62.1-255 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 62.1-44.35.1, 62.1-263.1, and 62.1-266.1, relating to ground water withdrawal; allocation.

Patron—Carr

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.36, 62.1-44.44, and 62.1-255 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 62.1-44.35.1, 62.1-263.1, and 62.1-266.1 as follows:

§ 62.1-44.35.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the State Water Control Board.

"Department" means the Department of Environmental Quality.

"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.

"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.

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

§ 62.1-44.36. Responsibility of State Water Control Board; formulation of policy.

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the State Water Control Board is assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.

The Board shall continue the study of existing water resources of this Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and such policies as have been initiated by the Division of Water Resources Department, and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the Board shall formulate a coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources policy, the Board shall, among other things, take into consideration but not be limited to the following principles and policies:

(1) Existing water rights State waters are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;

(2) Adequate and safe supplies should be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;

(3) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the Commonwealth as a whole;

(4) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(5) The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;

(6) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

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59 (7) Due regard shall be given in the planning and development of water recreation facilities to
60 safeguard against pollution.

61 The statement of water resource policy shall be revised from time to time whenever the Board shall
62 determine it to be in the public interest.

63 The initial statement of state water resource policy and any subsequent revisions thereof shall be
64 furnished by the Board to all state agencies and to all political subdivisions of the Commonwealth.

65 **§ 62.1-44.44. Construction of chapter.**

66 Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, any existing
67 riparian rights or other vested rights in *surface* water or *surface* water use.

68 **§ 62.1-255. Definitions.**

69 As used in this chapter, unless the context requires otherwise:

70 "Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural,
71 commercial, and industrial uses.

72 "Board" means the State Water Control Board.

73 "Department" means the Department of Environmental Quality.

74 "*Eastern Virginia Groundwater Management Area*" or "*EVGMA*" means the ground water
75 management area created pursuant to the Ground Water Management Act of 1992 (§ 62.1-254 et seq.)
76 and encompassing the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk,
77 Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the Counties of Charles City, Essex,
78 Gloucester, Isle of Wight, James City, King and Queen, King George, King William, Lancaster,
79 Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry,
80 Sussex, Westmoreland, and York; and those areas lying east of Interstate 95 that are located within the
81 Counties of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and
82 Stafford.

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

87 "Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal
88 of a specified quantity of ground water in a ground water management area.

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

91 "*Human consumption permittee*" means an applicant for a ground water withdrawal permit that
92 proposes to use 50 percent or more of the ground water to be withdrawn for human consumption, as
93 determined by the Board.

94 "Person" means any and all persons, including individuals, firms, partnerships, associations, public or
95 private institutions, municipalities or political subdivisions, governmental agencies, or private or public
96 corporations organized under the laws of this Commonwealth or any other state or country.

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

99 **§ 62.1-263.1. Eastern Virginia Groundwater Management Area; human consumption; technical**
100 **evaluation; criteria for issuance of permits.**

101 A. Notwithstanding any other provision of this chapter, any person submitting an application for a
102 ground water withdrawal permit in the Eastern Virginia Groundwater Management Area (EVGMA) that
103 desires to be considered a human consumption permittee shall submit documentation to the Board
104 demonstrating that 50 percent or more of the proposed withdrawal will be used for human consumption.
105 No person in the EVGMA that fails to submit such documentation to the satisfaction of the Board shall
106 be treated as a human consumption permittee.

107 B. In evaluating permit applications for withdrawals in the EVGMA, the Board shall conduct a
108 technical evaluation of the effects of the proposed ground water withdrawal with the stabilized
109 cumulative effects of all existing lawful withdrawals to determine whether the proposed withdrawal will
110 lower water levels in any confined aquifer.

111 The Board shall issue no ground water withdrawal permit to a human consumption permittee in the
112 EVGMA if such evaluation shows that the withdrawal will lower water levels in any confined aquifer
113 below a point that represents 80 percent of the distance between the land surface and the top of the
114 aquifer.

115 The Board shall issue no ground water withdrawal permit to an applicant in the EVGMA that does
116 not qualify as a human consumption permittee if such evaluation shows that the withdrawal will lower
117 water levels in any confined aquifer below a point that represents eight percent of the distance between
118 the land surface and the top of the aquifer.

119 Nothing in this section shall be construed to prevent the Board from issuing a ground water
120 withdrawal permit with terms that are more restrictive than those established in this section.

121 § 62.1-266.1. *Eastern Virginia Groundwater Management Area; human consumption; technical*
122 *evaluation and permit modification for existing ground water withdrawal permits.*

123 A. For purposes of this section, "existing human consumption permittee" means a person that (i)
124 holds a ground water withdrawal permit as of July 1, 2019, in the Eastern Virginia Groundwater
125 Management Area (EVGMA) and (ii) used 50 percent or more of the ground water withdrawn during
126 the 12-month period ending July 1, 2020, for human consumption, as determined by the Board.

127 B. Notwithstanding any other provision of this chapter or the terms of any ground water withdrawal
128 permit issued pursuant to this chapter, any person that holds a ground water withdrawal permit in the
129 EVGMA as of July 1, 2019, and that desires to be considered an existing human consumption permittee
130 shall submit water use data to the Board before August 1, 2020, demonstrating that 50 percent or more
131 of the ground water withdrawn by the permit holder in the 12 months ending July 1, 2020, was used for
132 human consumption. No person in the EVGMA that fails to submit such data to the satisfaction of the
133 Board shall be treated as an existing human consumption permittee.

134 C. Notwithstanding any other provision of this chapter or the terms of any ground water withdrawal
135 permit issued pursuant to this chapter, before July 1, 2021, the Board shall conduct a technical
136 evaluation of the effects of the ground water withdrawal for each permit holder in the EVGMA as of
137 July 1, 2019, to determine whether the withdrawal authorized by each such ground water withdrawal
138 permit with the stabilized cumulative effects of all existing lawful withdrawals will lower water levels in
139 any confined aquifer.

140 If the Board determines that a withdrawal for an existing human consumption permittee in the
141 EVGMA will lower water levels in any confined aquifer below a point that represents 80 percent of the
142 distance between the land surface and the top of the aquifer, the Board shall modify the permit and
143 change any terms necessary to ensure that the withdrawal will not lower water levels below such point.

144 If the Board determines that a withdrawal by a person that is not an existing human consumption
145 permittee in the EVGMA will lower water levels in any confined aquifer below a point that represents
146 eight percent of the distance between the land surface and the top of the aquifer, the Board shall modify
147 the permit and change any terms necessary to ensure that the withdrawal will not lower water levels
148 below such point.

149 The Board is authorized to charge a fee, not to exceed \$10,000, to each permittee in the EVGMA as
150 of July 1, 2019, for the cost of the technical evaluation required by this subsection. No action required
151 by this subsection shall constitute the issuance of a new ground water withdrawal permit or change the
152 expiration date of a ground water withdrawal permit.

153 D. The provisions of this section shall expire on July 1, 2021.