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HOUSE BILL NO. 1642

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 25, 2020)

(Patron Prior to Substitute—Delegate Ayala)

A BILL to amend the Code of Virginia by adding in Chapter 6 of Title 32.1 an article numbered 2.2, consisting of sections numbered 32.1-176.8 and 32.1-176.8:1, relating to coal ash ponds; well monitoring program.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 32.1 an article numbered 2.2, consisting of sections numbered 32.1-176.8 and 32.1-176.8:1, as follows:

Article 2.2.

Wells Near Certain Coal Ash Ponds.

§ 32.1-176.8. Definitions.

For the purposes of this article:

"Coal ash pond" means any natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of coal combustion residuals and liquids; (ii) treats, stores, or disposes of coal combustion residuals; and (iii) is located in the Chesapeake Bay Watershed at the Brema Power Station in Fluvanna County, Chesapeake Energy Center in the City of Chesapeake, Chesterfield Power Station in Chesterfield County, or Possum Point Power Station in Prince William County.

"DEQ" means the Department of Environmental Quality.

"Utility" means the owner or operator of a coal ash pond.

§ 32.1-176.8:1. Private well and public water supply well testing near coal ash ponds; monitoring.

A. For each private well or public water supply well within 1.5 miles of any coal ash pond, the utility shall commission a well water test on or before July 1, 2021, on behalf of the owner of the well. The test shall be conducted by a company certified to perform such tests by the Virginia Environmental Laboratory Accreditation Program. The utility shall recommend a certified laboratory to perform the test, but the owner of the well may elect to have an independent certified laboratory perform the test. Such test shall, at a minimum, test for alkalinity (bicarbonate), alkalinity (carbonate), alkalinity (total), aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chloride, chromium (hexavalent), chromium (total), cobalt, copper, iron, lead, lithium, magnesium, manganese, mercury, molybdenum, nickel, potassium, radium (total alpha), radium-228, radium (radium-226 and radium-228 combined), selenium, sodium, strontium, sulfate, thallium, thorium, vanadium, zinc, and total dissolved solids. The utility shall pay the reasonable costs of such testing.

B. The utility shall commission a test as required by subsection A for each private well or public water supply well (i) once per year during each of the five years following the approval by DEQ of the closure of a coal ash pond and (ii) once every five years thereafter.

C. If any sampling, test, or water quality analysis conducted pursuant to the provisions of this section indicates that water from a private well or public water supply well exceeds any U.S. Environmental Protection Agency Maximum Contaminant Level for drinking water, the utility shall (i) within seven days of the receipt of test results, either replace the contaminated well with an alternate supply of potable drinking water or provide a treatment system for the contaminated well in order to render the water supply potable and (ii) within 90 days of the receipt of test results, either provide an alternate supply of water that is safe for other household uses or provide a treatment system for the contaminated well in order to render the water supply safe for other household uses. All costs associated with such provision of alternate supplies of water or treatment shall be borne by the utility. In lieu of providing an alternate supply of water or a treatment system pursuant to clause (i) or (ii) and to the extent service is available, the utility may elect to pay the costs of connecting the property owner to a water utility operated by a city or county.

D. The Department of Health and DEQ shall receive the results of the tests conducted pursuant to the provisions of this section.

E. Nothing in this section shall be construed to preclude or impair the right of any property owner to refuse the sampling or testing of any private well or public water supply well on his property. The requirements of this section are in addition to other applicable laws or regulations, and nothing in this section, including the requirement to commission testing or to treat or replace contaminated drinking water, shall preempt or preclude any additional legal action or remedy authorized by law.