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HOUSE BILL NO. 332

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 32.1-163, 32.1-164, and 54.1-2301 of the Code of Virginia, relating to alternative onsite sewage systems; routine testing; who may test.

Patron—Marshall, R.G.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163, 32.1-164, and 54.1-2301 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-163. Definitions.

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

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Betterment loan" means a loan to be provided by private lenders either directly or through a state agency, authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair, replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of reducing threats to public health and ground and surface waters, which loan is secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements under § 15.2-2411.

"Conduit lender" means a state agency, authority or instrumentality or a locality, local or regional authority or an instrumentality thereof serving as a conduit lender of betterment loans.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, distribution boxes, or work requiring a construction permit and installer.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a treatment works.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner, who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an alternative onsite sewage system.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Owner-operator" means the owner of an alternative onsite sewage system with flows of less than 1,000 gallons per day serving an individual single-family dwelling occupied by such owner. Owner-operators shall be licensed pursuant to § 54.1-2301 and shall be limited to operating the alternative onsite sewage system serving his own residence. Owner-operators shall demonstrate the competence and knowledge to operate, monitor, and maintain an alternative onsite sewage system.

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59 "Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted
60 or adopted by the State Board of Health.

61 "Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

62 "Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower,
63 bath or lavatory wastes, separately or together with such underground, surface, storm and other water
64 and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial
65 establishments or other places.

66 "Sewerage system" means pipelines or conduits, pumping stations and force mains and all other
67 construction, devices and appliances appurtenant thereto, used for the collection and conveyance of
68 sewage to a treatment works or point of ultimate disposal.

69 "Subsurface drainfield" means a system installed within the soil and designed to accommodate treated
70 sewage from a treatment works.

71 "Transportation" means the vehicular conveyance of sewage.

72 "Treatment works" means any device or system used in the storage, treatment, disposal or
73 reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to
74 pumping, power and other equipment and appurtenances, septic tanks, and any works, including land,
75 that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of
76 residues or effluents resulting from such treatment.

77 § 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of
78 permits; inspections; civil penalties.

79 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
80 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
81 sewage systems, and treatment works as they affect the public health and welfare. The Board shall also
82 have supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage
83 systems as they affect the public health and welfare. In discharging the responsibility to supervise and
84 control the safe and sanitary treatment and disposal of sewage as they affect the public health and
85 welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground
86 water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State
87 Water Control Board, the Board of Health shall assume the responsibility for permitting alternative
88 discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable
89 regulations of the State Water Control Board and be registered with the State Water Control Board.

90 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board
91 shall require and the Department shall conduct regular inspections of alternative discharging sewage
92 systems. The Board shall also establish requirements for maintenance contracts for alternative
93 discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an
94 alternative discharging sewage system, that the applicant present an executed maintenance contract. Such
95 contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System
96 permit issued by the State Water Control Board.

97 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and
98 disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the
99 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be
100 designed to protect the public health and promote the public welfare and may include, without
101 limitation:

102 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,
103 installation, modification or operation of a sewerage system or treatment works except in those instances
104 where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

105 2. Criteria for the granting or denial of such permits.

106 3. Standards for the design, construction, installation, modification and operation of sewerage systems
107 and treatment works for permits issued by the Commissioner.

108 4. Standards governing disposal of sewage on or in soils.

109 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

110 (a) Public and private wells supplying water for human consumption,

111 (b) Lakes and other impounded waters,

112 (c) Streams and rivers,

113 (d) Shellfish waters,

114 (e) Ground waters,

115 (f) Areas and places of human habitation,

116 (g) Property lines.

117 6. Standards as to the adequacy of an approved water supply.

118 7. Standards governing the transportation of sewage.

119 8. A prohibition against the discharge of untreated sewage onto land or into waters of the
120 Commonwealth.

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.

11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems.

12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits.

15. Performance requirements for nitrogen discharged from alternative onsite sewage systems that protect public health and ground and surface water quality.

C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the State Water Control Board shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage system to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The Board may require that a survey plat be included with an application for such letter. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for an onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title

182 to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's
183 issuance, there has been a substantial, intervening change in the soil or site conditions where the onsite
184 sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations
185 from licensed onsite soil evaluators for the issuance of such letters, if they are produced in accordance
186 with the Board's established procedures for issuance of letters. The Department shall issue such letters
187 within 20 working days of the application filing date when evaluations produced by licensed onsite soil
188 evaluators are submitted as supporting documentation. The Department shall not be required to do a
189 field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the
190 Department may conduct such field analyses as deemed necessary to protect the integrity of the
191 Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall
192 pay the fee established by the Board for the letters' issuance and, upon application for an onsite sewage
193 system permit, shall pay the permit application fee.

194 H. The Board shall establish a program for the operation and maintenance of alternative onsite
195 systems. The program shall require:

196 1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system
197 operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the
198 operation permit. *However, an alternative onsite sewage system for an individual single-family dwelling*
199 *with flows less than or equal to 1,000 gallons per day may be operated by an owner-operator licensed*
200 *pursuant to § 54.1-2301;*

201 2. The licensed operator *or owner-operator* to provide a report on the results of the site visit utilizing
202 the web-based system required by this subsection. A fee of \$1 shall be paid by the licensed operator *or*
203 *owner-operator* at the time the report is filed. Such fees shall be credited to the Onsite Operation and
204 Maintenance Fund established pursuant to § 32.1-164.8;

205 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance
206 requirements of each system, including its components. The system shall have the capability for
207 pre-notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators
208 *and owner-operators* shall be required to enter their reports onto the system. The Department of Health
209 shall utilize the system to provide for compliance monitoring of operation and maintenance requirements
210 throughout the state. The Commissioner shall consider readily available commercial systems currently
211 utilized within the Commonwealth; and

212 4. Any additional requirements deemed necessary by the Board, *provided that no program shall*
213 *require the owner of an individual single-family dwelling with an alternative onsite sewage system that*
214 *has flows less than or equal to 1,000 gallons per day to provide analyzed samples of effluent on a*
215 *routine and recurring basis.*

216 I. The Board shall promulgate regulations governing the requirements for maintaining alternative
217 onsite sewage systems.

218 J. The Board shall establish a uniform schedule of civil penalties for violations of regulations
219 promulgated pursuant to subsection B that are not remedied within 30 days after service of notice from
220 the Department. Civil penalties collected pursuant to this chapter shall be credited to the Environmental
221 Health Education and Training Fund established pursuant to § 32.1-248.3.

222 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty
223 for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for
224 each additional violation. Each day during which the violation is found to have existed shall constitute a
225 separate offense. However, specified violations arising from the same operative set of facts shall not be
226 charged more than once in any 10-day period, and a series of specified violations arising from the same
227 operative set of facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not
228 apply to unoccupied structures which do not contribute to the pollution of public or private water
229 supplies or the contraction or spread of infectious, contagious, or dangerous diseases. The Department
230 may pursue other remedies as provided by law; however, designation of a particular violation for a civil
231 penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that
232 contributes to or is likely to contribute to the pollution of public or private water supplies or the
233 contraction or spread of infectious, contagious, or dangerous diseases.

234 The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any
235 person summoned or issued a ticket for a scheduled violation may make an appearance in person or in
236 writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing
237 may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

238 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit
239 liability, the violation shall be tried in the general district court with jurisdiction in the same manner and
240 with the same right of appeal as provided for by law. In any trial for a scheduled violation, the
241 Department shall have the burden of proving by a preponderance of the evidence the liability of the
242 alleged violator. An admission of liability or finding of liability under this section shall not be deemed
243 an admission at a criminal proceeding.

This section shall not be interpreted to allow the imposition of civil penalties for activities related to land development.

K. The Department shall establish procedures for requiring a survey plat as part of an application for a permit or letter for any onsite sewage or alternative discharging sewage system, and for granting waivers for such requirements. In all cases, it shall be the landowner's responsibility to ensure that the system is properly located as permitted.

§ 54.1-2301. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals; membership; terms; duties.

A. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals shall consist of 11 members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the Executive Director of the State Water Control Board, or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the Board, a currently employed wastewater works operator having a valid license of the highest classification issued by the Board, a faculty member of a state university or college whose principal field of teaching is management or operation of waterworks or wastewater works, a representative of an owner of a waterworks, a representative of an owner of a wastewater works, a licensed alternative onsite sewage system operator, a licensed alternative onsite sewage system installer, a licensed onsite soil evaluator, and one citizen member. The alternative onsite sewage system operator, alternative onsite sewage system installer, and onsite soil evaluator shall have practiced for at least five consecutive years immediately prior to appointment. No owner shall be represented on the Board by more than one representative or employee operator. The term of Board members shall be four years.

B. The Board shall examine waterworks and wastewater works operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.

D. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems necessary.

E. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) owner-operators, as defined in § 32.1-163, of alternative onsite sewage systems and (ii) any employees or agents of licensed operators that operate, monitor, and maintain alternative onsite sewage systems. Such regulations shall include all such requirements set out in subsection D, provided that no relevant work experience shall be required for such licensees. Any professional engineer with a current license in the Commonwealth may elect to be deemed an owner-operator without the demonstration of further competence if he owns an alternative onsite sewage system with flows less than or equal to 1,000 gallons per day serving an individual single-family dwelling occupied by him. Owner-operators shall demonstrate the competence and knowledge to operate, monitor, and maintain an alternative onsite sewage system.