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HOUSE BILL NO. 2185

Offered January 12, 2011

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A BILL to amend and reenact §§ 32.1-163.5, 32.1-163.6, and 32.1-164 of the Code of Virginia, relating to submission of onsite soil evaluations for permits or letters for sewage systems.

Patron—Lewis

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163.5, 32.1-163.6, and 32.1-164 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-163.5. Onsite sewage evaluations.

A. Notwithstanding other provisions of this chapter, for purposes of subdivision review, permit approval, and issuance of letters for residential development, the Board, Commissioner, and Department of Health shall accept private site evaluations and designs, in compliance with the Board's regulations for septic systems and other ~~on-site~~ onsite sewage systems, designed and certified by a licensed professional engineer, in consultation with an authorized ~~on-site~~ onsite soil evaluator, or by an authorized ~~on-site~~ onsite soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter. *The Department shall perform a field check of private evaluations and designs prior to issuing the requested letter, permit or approval only in cases in which such review is deemed necessary to protect the public health and integrity of the Commonwealth's environment.*

B. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit or approval; however, the Department may conduct such review of the work and field analysis as deemed necessary to protect the public health and integrity of the Commonwealth's environment. Within fifteen 15 working days from the date of written submission of a request for approval of a site evaluation and design for a single lot construction permit, and within sixty 60 days from the date of written submission of a request for approval of a site evaluation and design for multiple lot certification letters or subdivision review, the Department shall (i) issue the requested letter, permit or approval or (ii) set forth in writing the specific reasons for denial. If the Department fails to take action to approve or disapprove the designs, evaluations, or subdivision reviews within the time specified herein, the designs, evaluations or subdivision reviews shall be deemed approved and the appropriate letter, permit or approval shall be issued. Notwithstanding any other provision of law or the provisions of any local ordinance, counties, cities and towns shall comply with the time limits set forth in this subsection.

C. Nothing in this section shall authorize anyone other than an individual licensed as a professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to engage in the practice of engineering.

D. The provisions of this section shall not apply to any locality that has entered into a contract with the Board of Health in accordance with Chapter 678 of the 1994 Acts of Assembly nor to a proprietary, pre-engineered septic system deemed by the Department to comply with the Board's regulations.

§ 32.1-163.6. Professional engineering of onsite treatment works.

A. Notwithstanding other provisions of this chapter, for purposes of permit approval, the Board, Commissioner, and Department of Health shall accept treatment works designs from individuals licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1. The designs shall (i) be compliant with standard engineering practice and performance requirements established by the Board and those horizontal setback requirements necessary to protect the public health and the environment, (ii) reflect that degree of skill and care ordinarily exercised by licensed members of the engineering profession practicing at the time of performance, (iii) be appropriate for the particular soil characteristics of the site, and (iv) ensure that the treatment works will meet or exceed the discharge, effluent, and surface and ground water quality standards for systems otherwise permitted pursuant to the regulations implementing this chapter.

B. The Department ~~may~~ shall conduct such review of the work and field analysis as *only in cases in which such review is* deemed necessary to protect the public health and integrity of the Commonwealth's environment.

C. Within 21 calendar days from the date of application for treatment works sized at 1,000 gallons per day or smaller, and within 60 calendar days from the date of application for treatment works sized

59 at more than 1,000 gallons per day, the Department shall (i) issue the requested approval, or (ii) set
60 forth in writing the specific reasons for denial.

61 D. The Department shall establish an engineering design review panel to review the Department's
62 decision to disapprove an onsite sewage system design. The Commissioner shall appoint four individuals
63 licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise
64 in onsite sewage systems to serve on the engineering design review panel with (i) one representing the
65 Department of Health, (ii) one representing the Department of Environmental Quality, (iii) one
66 representing the Virginia Society of Professional Engineers, and (iv) one representing the American
67 Council of Engineering Companies of Virginia. If a state agency is unable to provide a representative in
68 accordance with this subsection, the Commissioner shall appoint another individual licensed as a
69 professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite
70 sewage systems. The members of the design review panel shall appoint a member to serve as Chairman.
71 The design review panel shall be designated a subordinate, as defined in § 2.2-4001, and shall meet as
72 necessary.

73 E. When the Department denies an application pursuant to subsection D, the owner may appeal that
74 decision in accordance with § 32.1-164.1. Alternatively, the owner, or the professional engineer
75 responsible for an onsite sewage system design with the owner's written consent, may request an
76 informal fact-finding conference before the engineering design review panel established in subsection D.
77 The request must (i) be in writing, (ii) be received by the Commissioner within 30 days of the
78 professional engineer's receipt of the Department's denial, and (iii) cite the reason or reasons for the
79 request. The informal fact-finding conference shall be held within 45 calendar days of the request. The
80 proceedings of the engineering design review panel shall be governed by the provisions of the
81 Administrative Process Act (§ 2.2-4000 et seq.). Within 30 days following its receipt of the engineering
82 review panel's written recommendations, the Department shall consider the recommendations of the
83 engineering design review panel and approve the application or re-affirm its denial.

84 F. When the Department denies an application following review by the engineering design review
85 panel, the owner may appeal that decision in accordance with § 32.1-164.1.

86 G. This section shall not be construed to require an owner to seek review by the engineering design
87 review panel before appealing a permit denial pursuant to § 32.1-164.1.

88 H. This section shall not be construed to prohibit any locality from adopting or enforcing any
89 ordinance duly enacted pursuant to Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2.

90 I. All treatment works designs permitted pursuant to this section shall comply with operation,
91 maintenance, and monitoring requirements as set forth in regulations implementing this chapter.

92 § 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of
93 permits; inspections; civil penalties.

94 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
95 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
96 sewage systems, and treatment works as they affect the public health and welfare. The Board shall also
97 have supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage
98 systems as they affect the public health and welfare. In discharging the responsibility to supervise and
99 control the safe and sanitary treatment and disposal of sewage as they affect the public health and
100 welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground
101 water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State
102 Water Control Board, the Board of Health shall assume the responsibility for permitting alternative
103 discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable
104 regulations of the State Water Control Board and be registered with the State Water Control Board.

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

112 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and
113 disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the
114 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be
115 designed to protect the public health and promote the public welfare and may include, without
116 limitation:

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

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

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

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

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

125 (a) a. Public and private wells supplying water for human consumption,;

126 (b) b. Lakes and other impounded waters,;

127 (c) c. Streams and rivers,;

128 (d) d. Shellfish waters,;

129 (e) e. Ground waters,;

130 (f) f. Areas and places of human habitation,;

131 (g) g. Property lines.

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

133 7. Standards governing the transportation of sewage.

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

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

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

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

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

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

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

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

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

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

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

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

171 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of
172 alternative discharging sewage systems as may be required by the Board. The funds received in payment
173 of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems
174 necessary, to the Department for the purpose of carrying out the provisions of this section. However,
175 \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to
176 § 32.1-164.1:01.

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

180 F. Any owner who violates any provision of this section or any regulation of the Board of Health or
181 the State Water Control Board relating to alternative discharging sewage systems or who fails to comply

182 with any order of the Board of Health or any special final order of the State Water Control Board shall
183 be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

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

188 G. The Board shall establish and implement procedures for issuance of letters recognizing the
189 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The
190 Board may require that a survey plat be included with an application for such letter. Such letters shall
191 state, in language determined by the Office of the Attorney General and approved by the Board, the
192 appropriateness of the soil for an onsite sewage system; no system design shall be required for issuance
193 of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the
194 jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located so
195 as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the
196 sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title
197 to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's
198 issuance, there has been a substantial, intervening change in the soil or site conditions where the onsite
199 sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations
200 from licensed onsite soil evaluators for the issuance of such letters, if they are produced in accordance
201 with the Board's established procedures for issuance of letters. *The Department shall perform a field*
202 *check of the evaluation prior to issuing such a letter or a permit based on such letter only in cases in*
203 *which such review is deemed necessary to protect the integrity of the Commonwealth's environment.* The
204 Department shall issue such letters within 20 working days of the application filing date when
205 evaluations produced by licensed onsite soil evaluators are submitted as supporting documentation. ~~The~~
206 ~~Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a~~
207 ~~permit based on such letter; however, the Department may conduct such field analyses as deemed~~
208 ~~necessary to protect the integrity of the Commonwealth's environment.~~ Applicants for such letters in lieu
209 of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and,
210 upon application for an onsite sewage system permit, shall pay the permit application fee.

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

213 1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system
214 operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the
215 operation permit;

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

220 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance
221 requirements of each system, including its components. The system shall have the capability for
222 pre-notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators
223 shall be required to enter their reports onto the system. The Department of Health shall utilize the
224 system to provide for compliance monitoring of operation and maintenance requirements throughout the
225 state. The Commissioner shall consider readily available commercial systems currently utilized within
226 the Commonwealth; and

227 4. Any additional requirements deemed necessary by the Board.

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

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

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

contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

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

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

L. The Department shall establish procedures for requiring submission of onsite soil evaluations performed by a licensed onsite soil evaluator or by a professional engineer following consultation with a licensed onsite soil evaluator with every application for a permit or letter for any onsite sewage or alternative discharging sewage system. However, the Department may waive the requirement for submission of such onsite soil evaluations from a licensed onsite soil evaluator for applicants whose incomes are below the federal poverty guidelines established by the U.S. Department of Health and Human Services.