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SENATE BILL NO. 48

Offered January 8, 2014

Prefiled December 17, 2013

A BILL to amend and reenact § 62.1-195.1 of the Code of Virginia, relating to drilling for oil and gas in the Eastern Virginia Groundwater Management Area.

 Patron—Stuart

 Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-195.1 of the Code of Virginia is amended and reenacted as follows:****§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.**

A. Notwithstanding any other law, a person shall not drill for oil or gas *within the area designated by the Department of Environmental Quality as the Eastern Virginia Groundwater Management Area or* in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 62.1-44.15:68, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in § 62.1-44.15:68, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the State Water Control Board pursuant to § 62.1-44.15:72; or

2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of oil or gas into the environment during drilling, production, and transportation on:

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and Energy shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. The Department of Environmental Quality shall:

1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than 30 days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to the Department of Environmental Quality; and

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines, Minerals and Energy, within 90 days after notification and receipt of the environmental impact assessment from the Department.

D. The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it has considered the findings and recommendations of the Department of Environmental Quality.

E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A only if:

1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;

2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both of which have been filed with and approved by the State Water Control Board.

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59 For purposes of this section, the oil discharge contingency plan shall comply with the requirements set
60 forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility
61 required shall take into account the type of operation, location of the well, the risk of discharge or
62 accidental release, the potential damage or injury to state waters or sensitive natural resource features or
63 the impairment of their beneficial use that may result from discharge or release, the potential cost of
64 containment and cleanup, and the nature and degree of injury or interference with general health, welfare
65 and property that may result from discharge or accidental release;

66 3. All land-disturbing activities resulting from the construction and operation of the permanent
67 facilities necessary to implement the contingency plan and the area within the berm will be located
68 outside of those areas described in subsection A;

69 4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal
70 amounts of runoff;

71 5. Persons certified in blowout prevention are present at all times during drilling;

72 6. Conductor pipe is set as necessary from the surface;

73 7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface
74 or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as
75 defined in § 62.1-10, whichever is deeper;

76 8. Freshwater-based drilling mud is used during drilling;

77 9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated
78 fluids or other contaminated fluids;

79 10. Multiple blow-out preventers are employed; and

80 11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1
81 and regulations promulgated thereunder.

82 G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be enforced consistent
83 with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

84 H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of
85 the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of
86 oil *or gas* is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall
87 notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the
88 Secretaries shall develop a joint report to the Governor and the General Assembly assessing the
89 environmental risks and safeguards; transportation issues; state-of-the-art oil *or gas* production well
90 technology; economic impacts; regulatory initiatives; operational standards; and other matters related to
91 the production of oil *or gas* in the region. No permits for oil *or gas* production wells shall be issued
92 until (i) the Governor has had an opportunity to review the report and make recommendations, in the
93 public interest, for legislative and regulatory changes, (ii) the General Assembly, during the next
94 upcoming regular session, has acted on the Governor's recommendations or on its own initiatives, (iii)
95 *the State Water Control Board has adopted regulations that protect the quality and quantity of surface*
96 *and ground water resources in Tidewater Virginia during the production of oil and gas, and (iv) any*
97 *resulting legislation has become effective. The report by the Secretaries and the Governor's*
98 *recommendations shall be completed within 18 months of the findings of the Director of the Department*
99 *of Mines, Minerals and Energy.*