

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: HB 1234

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Hugo

3. Committee: Health, Welfare and Institutions

4. Title: Water supplies and water works; domestic use.

5. Summary: Replaces the defined term "human consumption" with the defined term "domestic use" in the context of water supplies and waterworks.

6. Budget Amendment Necessary: See item 8.

7. Fiscal Impact Estimates: Preliminary, see item 8.

8. Fiscal Implications: This fiscal impact statement has been updated to incorporate new information provided by the U.S. Environmental Protection Agency (EPA) to the Virginia Department of Health (VDH), related to the loss of additional federal funds. This bill would have a fiscal impact on the Commonwealth, however the full cost cannot be determined at this time.

The Department of Health is the state agency that implements the Safe Drinking Water Act (SDWA) and regulates waterworks in Virginia. The EPA granted Virginia (acting through VDH) primacy for the SDWA in Virginia in 1977. Since that time, VDH has received approximately \$26.0 million per year in funding (in direct federal grants and repayments to the Virginia Water Supply Revolving Fund) to implement the federal program to ensure safe drinking water. The proposed changes to the definitions deviate from the SDWA and the National Primary Drinking Water Regulation (NPDWR), which could put Virginia at risk for losing primacy. If that occurred, EPA would assume enforcement of the SDWA instead of VDH. As a result, Virginia would lose up to \$26.0 million in annual funding from the EPA, need to surrender \$52 million currently in the Virginia Water Supply Revolving Fund, and forfeit future loan proceeds valued at \$10.1 million per year.

States granted primacy, such as Virginia, receive grants or repayments to the Drinking Water State Revolving Fund (DWSRF), the Public Water System Supervision (PWSS) program, and other programs that support safe drinking water. In 2017, the Commonwealth received \$25.9 million to administer through the DWSRF, PWSS, and other programs. The DWSRF provides construction, training, and technical assistance to waterworks. The PWSS program provides programmatic oversight, compliance, and technical assistance. These programs

support 2,815 waterworks in Virginia, which serve about two-thirds of Virginia's population with safe drinking water.

To receive federal funding and to maintain state control over waterworks through primacy, Virginia must implement and enforce the SDWA and the National Primary Drinking Water Regulations (NPDWR). The current definitions in the Code of Virginia help avoid confusion about what is a "public water system" (or waterworks) based on the SDWA and NPDWR. However, the proposed changes to the definitions in HB1234 deviate from the SDWA and NPDWR by replacing the term "human consumption" with "domestic use" in the definition of waterworks. The EPA reports that the changes in definitions would be less stringent than the SDWA, because "domestic use" does not apply to commercial establishments such as restaurants, campgrounds, marinas, and other businesses that serve drinking water to the public. As a result, EPA would initiate a process to review Virginia's primacy and consider withholding the yearly funds sent to the Commonwealth each year.

The Safe Drinking Water Act, § 42-300(j)(2), defines the term "public water system" as "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." The NPDWR, 40 CFR § 141.2, define the term similarly, but add, "or an average of twenty-five individuals daily at least 60 days out of the year."

Representatives of the EPA recently met with VDH program staff to discuss Virginia's programs and this legislation. The EPA states it would assume enforcement of the federal requirements on business establishments if the Commonwealth could no longer enforce the federal regulations based on passage of HB1234. Subsequently, the EPA would review whether to retract its primacy designation to Virginia, which the EPA estimates could take 12 to 18 months to conclude. If the EPA retracted Virginia's primacy designation, \$26.0 million in annual EPA funding to Virginia would be expected to be eliminated or reduced by 90% or more.

Since this bill cannot change VDH's program implementation of the federal requirements if Virginia expects to retain primacy, VDH expects to handle a higher number of appeal cases and to spend more time educating the EPA, the public, and consumers. VDH expects increased appeals and outreach from waterworks owners, however as the number of appeals cannot be estimated the need for additional staffing cannot be determined at this time.

At minimum VDH would still require staff to provide technical assistance, training, oversight and support to waterworks throughout the state. Additionally, should the state wish to maintain the same level of annual investment in drinking water infrastructure, the lost federal funding would need to be replaced with general fund dollars, as the EPA would not likely continue the same level of financial support, if any, should Virginia lose primacy.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Health.

10. Technical Amendment Necessary: No.

11. Other Comments: VDH utilizes financing agreements between the Virginia Resources Authority (VRA) as an Administrator of the Virginia Water Supply Revolving Fund (VWSRF) and the Commonwealth of Virginia.

Pursuant to Chapter 23, Title 62.1 of the Code of Virginia, the General Assembly created a permanent and perpetual fund known as the "Virginia Water Supply Revolving Fund" (the "Fund"). In conjunction with the Board of Health, the VRA administers and manages the Fund. From the Fund, the VRA makes loans to and acquires obligations of local governments in Virginia to finance or refinance the costs of water supply facilities within the meaning of Section 62.1-233 of the Act.

In accordance with EPA requirements, a loss of primacy would require Virginia to surrender the proceeds that have been deposited in the Fund that is currently valued at \$52 million. The state would also forfeit all future loan proceeds that are directed to the Fund. These annual loan repayments are valued at \$10.1 million per year. These funds are outside of VDH's state budget, as they are managed by VRA, but are critical to improving water works systems throughout the commonwealth.

VDH has not determined whether the state would need to make payment from the general fund on the \$11M currently outstanding and remaining to be paid on construction loans under binding commitments.