

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 1105

*An Act to amend and reenact §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia, relating to water supply plans; state and local.*

[H 542]

Approved April 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia are amended and reenacted as follows:**

**§ 62.1-44.36. Responsibility of State Water Control Board; formulation of policy.**

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia; and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the State Water Control Board is assigned the responsibility for planning the development, conservation and utilization of Virginia's water resources.

The Board shall continue the study of existing water resources of ~~this~~ *the* Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies and ~~such~~ policies as *that* have been initiated by the Division of Water Resources, and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the Board shall formulate a coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof. In formulating the Commonwealth's water resources policy, the Board shall, among other things, take into consideration ~~but not be limited to~~ the following principles and policies:

(1) 1. Existing water rights are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;

(2) 2. Adequate and safe supplies ~~should~~ *shall* be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses;

(3) 3. It is in the public interest that integration and coordination of uses of water, *especially by localities with shared water supplies*, and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the Commonwealth as a whole;

(4) 4. In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(5) 5. The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged;

(6) 6. Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(7) 7. Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution.

The statement of water resource policy shall be revised from time to time whenever the Board ~~shall~~ *determine* ~~determines~~ it to be in the public interest.

The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished by the Board to all state agencies and to all political subdivisions of the Commonwealth.

**§ 62.1-44.38. Plans and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.**

A. The Board shall prepare plans and programs for the management of the water resources of ~~this~~ *the* Commonwealth in such a manner as to encourage, promote, and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of ~~this~~ *the* Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, *and* the Tennessee-Big Sandy River Basin, and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins. Reports for each basin shall be published by the Board.

B. 1. In preparing river basin plan and program reports enumerated in subsection A ~~of this section~~,

the Board shall (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions; (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) ~~identify water management problems and alternative water management plans to address such problems~~ estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, the risk that each locality and region will experience water supply shortfalls; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified.

2. The Board shall direct the Department of Environmental Quality (the Department) in its facilitation of regional water planning efforts. The Department shall (i) ensure that localities coordinate sufficiently in the development of regional water plans; (ii) provide planning, policy, and technical assistance to each regional planning area, differentiated according to each area's water supply challenges, existing resources, and other factors; and (iii) ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks.

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for ~~all any other users~~ user. Location data shall be provided by each user in a coordinate system specified by the Board.

D. The Board shall establish advisory committees to assist it in the formulation of such plans or programs and in formulating recommendations called for in subsection E ~~of this section~~. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by any proposed or existing plan or program.

E. The Board shall prepare plans or programs and shall include in reports prepared under subsection A ~~of this section~~ recommended actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of plans or programs prepared under subsection B ~~of this section~~.

F. In addition to the preparation of plans called for in subsection A ~~of this section~~, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, ~~to include~~ including assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

#### **§ 62.1-44.38:1. Comprehensive water supply planning process; state, regional, and local water supply plans.**

A. The Board, with the advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans consistent with the provisions of this chapter. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources; ~~and~~; (iii) encourage, promote, and develop incentives for alternative water sources, including ~~but not limited to~~ desalinization; and (iv) encourage the development of cross-jurisdictional water supply projects.

B. ~~Local or regional water supply plans shall be prepared and submitted to the Department of Environmental Quality in accordance with~~ The Board shall adopt regulations designating regional planning areas based primarily on river basins. The Board may, as appropriate, designate multiple regional planning areas within a single river basin in order to enhance the manageability of planning within such basin. The regulations shall identify the particular regional planning area in which each locality shall participate and shall state which local stakeholder groups, including local governments, industrial and agricultural water users, public water suppliers, developers and economic development organizations, and conservation and environmental organizations, shall or may participate in coordinated water resource planning.

*C. 1. Each locality in a regional planning area shall participate in cross-jurisdictional, coordinated water resource planning. Such local coordination shall accommodate existing regional groups that have already developed water supply plans, including planning district commissions, and other regional planning entities as appropriate.*

*2. Each locality in a regional planning area shall develop and submit, with the other localities in that planning area, a single jointly produced regional water supply plan to the Department of Environmental Quality (the Department). Such regional water supply plan shall (i) clearly identify the region's water supply risks and (ii) propose regional strategies to address those water supply risks.*

*3. Each regional water supply plan also shall comply with applicable criteria and guidelines developed by the Board. Such criteria and guidelines shall take into account existing local and regional water supply planning efforts and requirements imposed under other state or federal laws. The criteria and guidelines established by the Board shall not prohibit a town from entering into a regional water supply plan with an adjacent county in the same regional planning area.*

*4. This section is intended to inform any regional water resource planning being done in the Commonwealth pursuant to interstate compacts.*

*D. The Board and the Department shall prioritize the allocation of planning funds and other funds to localities that sufficiently participate in regional planning.*

*E. In accordance with subdivision B 2 of § 62.1-44.38, the Department shall facilitate regional planning and provide assistance to each regional planning area as needed.*