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HOUSE BILL NO. 1674

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 25, 2020)

(Patron Prior to Substitute—Delegate Hodges)

A BILL to amend the Code of Virginia by adding a section numbered 62.1-44.15:22.1, relating to provisional water withdrawal permit; Eastern Virginia Groundwater Management Area.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 62.1-44.15:22.1 as follows:
§ 62.1-44.15:22.1. Provisional water withdrawal permit in Eastern Virginia Groundwater Management Area.

A. As used in this section, "EVGMA" means the Eastern Virginia Groundwater Management Area as declared by the Board pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.).

B. The Board is authorized to issue a provisional surface water withdrawal permit for a withdrawal proposed within the land area encompassed by the EVGMA to a permit applicant that has not identified an end user for the water. The Board may issue such provisional surface water withdrawal permit only if (i) the proposed source is an impoundment located within land owned by the applicant, (ii) the impoundment was created by an existing impounding structure permitted by the Virginia Soil and Water Conservation Board, and (iii) the impounding structure is in compliance with the Dam Safety Act (§ 10.1-604 et seq.). In calculating the potential allowable withdrawal, the Board shall assume that a need exists for the proposed amount of the withdrawal and that the proposed withdrawal will be put to the highest-priority beneficial use. The calculation by the Board of a potential allowable withdrawal shall not confer upon the permit applicant or any other future developer of the surface water resource a right or claim to any amount of water. Such permit shall be for a duration authorized for other surface water withdrawals and subject to the same permit application fee. Other than as provided in this section, the consideration and issuance of a provisional surface water withdrawal permit shall be in accordance with all other requirements for the issuance of a surface water withdrawal permit, including requirements for public notice and comment. The Board shall not issue more than three provisional surface water withdrawal permits.

C. A permit issued pursuant to subsection B shall not allow the withdrawal of water until the Department has issued a modified permit pursuant to subsection D after an end user has been identified and the following information has been provided to the Department in a report submitted for review and approval:

1. Information on the proposed use of and need for the surface water and information on how demand for the surface water was determined;

2. A detailed description of the processes that require the use of the water and the amounts of water associated with each process;

3. An alternatives analysis that complies with Board regulations; and

4. A plan, including the description, layout, design drawings, and alternatives analysis, for the construction of a raw water intake with associated appurtenances in accordance with regulations adopted by the Board requiring certain information for a complete application for an individual Virginia Water Protection permit.

D. Upon approval of the report provided pursuant to subsection C, the permittee shall, in order to authorize the surface water withdrawals and impacts identified in the report, request a permit modification in accordance with regulations adopted by the Board addressing major modifications to surface water withdrawal permits.

E. No potential withdrawal amount of any provisional surface water permit shall be used in the calculation of available water when assessing a subsequent surface water withdrawal application in the provisional permit's affected stream reach if (i) such provisional surface water permit has not been modified pursuant to subsection D; (ii) the Department and the subsequent surface water withdrawal permit applicant, through the alternatives analysis conducted as a part of such applicant's withdrawal application, have found the use of the provisional surface water permit withdrawal to be inappropriate; or (iii) the provisional surface water withdrawal permit holder has failed, within 30 days of a request by the Department, to provide an update (a) indicating the status of its efforts to identify and secure an end user and (b) demonstrating that an end user will be secured within 12 months. The amount of any withdrawal in a subsequent surface water withdrawal permit issued in the affected stream reach shall be taken into consideration when determining the amount available under the provisional surface water withdrawal permit to the extent determined by the Board to be necessary to protect existing beneficial

60 *uses.*

61 *F. This section shall not be construed to (i) allow the consideration of the potential withdrawal*
62 *amount of a provisional water withdrawal permit as a part of the Department's review of any water*
63 *withdrawal permit or application for water located outside of such provisional permit's affected stream*
64 *reach or (ii) require any water withdrawal permit holder or applicant to use a provisionally permitted*
65 *water source.*

66 **2. That the provisions of § 62.1-44.15:22.1 of the Code of Virginia, as created by this act, shall**
67 **apply to any surface water withdrawal permit application for surface water within the Eastern**
68 **Virginia Groundwater Management Area, whether still pending or denied, that is or was under**
69 **review by the Department of Environmental Quality (DEQ) on or after January 1, 2019. Any such**
70 **permit, including any permit that was denied for lack of an end user, shall continue to be**
71 **processed by DEQ in the order in which it was submitted to DEQ in relation to any other pending**
72 **application.**