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SENATE BILL NO. 1291

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact §§ 62.1-44.15:22 and 62.1-262 of the Code of Virginia, relating to Virginia Water Protection Permit; efficient water use.*

Patron—Mason

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:22 and 62.1-262 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:22. Water withdrawals and preservation of instream flow.

A. 1. Conditions contained in a Virginia Water Protection Permit may include ~~but are not limited to~~ the volume of water ~~which~~ that may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses.

2. Every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plan and a leak detection and repair plan shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

B. Notwithstanding any other provision of law, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in *subsection C* of § 62.1-44.15:20 ~~€~~ and only for the amount of water necessary to protect public health and safety. ~~These~~ Such agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of *subsection B* of § 62.1-44.15:20 ~~B~~, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under ~~the~~ other provisions of this section. The application for ~~the~~ such Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

§ 62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ § 62.1-260 ~~and or~~ 62.1-261 ~~and or~~ subsection H of § 62.1-266, shall include a water conservation and management plan approved by the Board. A Such water conservation and management plan shall include: (i) the use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; ~~and~~ (iv) a water auditing plan that complies with requirements established by the Board in regulations; (v) a leak detection and repair plan that complies with requirements established by the Board in regulations; and (vi) mandatory reductions during water-shortage emergencies, including, where appropriate, ordinances prohibiting waste of water

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59 generally and providing for mandatory water-use restrictions, with penalties, during water-shortage
60 emergencies. The Board shall approve ~~all~~ any water conservation plans in compliance plan that complies
61 with clauses (i) through ~~(iv)~~ (vi). Once approved by the Board, such water conservation and
62 management plan shall be incorporated by reference as a condition in the ground water withdrawal
63 permit. The Board shall not issue a ground water withdrawal permit, except as provided in § 62.1-260
64 or 62.1-261 or subsection H of § 62.1-266, without an approved water conservation and management
65 plan.

66 2. That the State Water Control Board (the Board) shall adopt regulations to implement the
67 provisions of this act. The initial adoption of such regulations shall be exempt from the
68 requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.
69 Such regulations establishing requirements for water auditing plans may include (i) a definition of
70 water loss; (ii) procedures for developing and conducting periodic standardized water loss audits;
71 (iii) procedures to validate water loss audits; (iv) recordkeeping and reporting requirements; and
72 (v) any other provisions necessary to implement this act. Such regulations establishing
73 requirements for leak detection and repair plans may include (a) requirements for periodic
74 surveys to monitor leakage; (b) a definition of water loss; (c) an acceptable level of water loss; (d)
75 requirements to monitor, calculate, and report water loss; (e) requirements for schedules to repair
76 infrastructure if the acceptable level of water loss is exceeded; (f) recordkeeping and reporting
77 requirements, and (g) any other provision necessary to implement this act. However, the Board
78 shall (1) provide a Notice of Intended Regulatory Action, (2) form a stakeholders advisory group,
79 (3) provide a 60-day public comment period prior to the Board's adoption of such regulations, and
80 (4) provide a written summary of comments received and responses to comments prior to the
81 Board's adoption of the regulations authorized by this act.

82 3. That the provisions of the first enactment of this act shall become effective 30 days after the
83 adoption by the State Water Control Board of the regulations required by the second enactment of
84 this act.