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SENATE BILL NO. 581

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact §§ 62.1-248 and 62.1-263 of the Code of Virginia, relating to Department of Environmental Quality; data; groundwater and surface water withdrawal permits.

Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-248 and 62.1-263 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-248. Permits.

A. Any permit issued by the Board shall include a flow requirement appropriate for the protection of beneficial instream uses. In determining the level of flow in need of protection, the Board shall consider, among other things, recreational and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the Board shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigation measures, and the socioeconomic impacts of such restrictions on the potentially affected water users and on the citizens of the Commonwealth in general. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit decision. Such data may include information relating to water levels, flow rates, and water quality.*

In its permit decision, the Board shall attempt to balance offstream and instream water uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-using group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

Permit conditions may include, but are not limited to, the following: (i) maximum amounts which may be withdrawn, (ii) times of the day or year during which withdrawals may occur, and (iii) requirements for voluntary and mandatory conservation measures.

B. In considering whether to issue, modify, revoke, or deny a permit under this section, the Board shall consider:

1. The number of persons using a stream and the object, extent and necessity of their respective withdrawals or uses;

2. The nature and size of the stream;

3. The types of businesses or activities to which the various uses are related;

4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream water uses;

5. The effects on beneficial uses; and

6. Any other relevant factors.

C. Permits shall be transferable among users, subject to approval by the Board.

D. In developing regulations governing the issuance of permits, the Board shall prioritize among types of users. Domestic and existing uses shall be given the highest priority in the issuance of permits for other beneficial uses. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act.

§ 62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

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59 In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of
60 ground water will be preserved and protected for all other beneficial uses. *The Board is authorized to*
61 *utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit*
62 *application evaluation. Such data may include information relating to water levels, flow rates, and water*
63 *quality.*

64 In evaluating the available ground water with respect to permit applications for new or expanded
65 withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall
66 use the average of the actual historical ground water usage from the inception of the ground water
67 withdrawals of a political subdivision or authority operating a ground water and surface water
68 conjunctive use system and shall not use the total permit capacity of such system in determining such
69 availability.