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HOUSE BILL NO. 2242

Offered January 21, 1999

A BILL to amend and reenact §§ 32.1-27, 32.1-175.01 and 32.1-176 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-171.2, relating to the Water Supply Assistance Grant Fund.

Patron—Phillips

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-27, 32.1-175.01 and 32.1-176 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 32.1-171.2 as follows:

§ 32.1-27. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-27.1, imposition of a civil penalty or appointment of a receiver.

C. Without limiting the remedies which may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed \$10,000 for each violation, which shall be paid to the general fund, *except that civil penalties for environmental pollution shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.* Each day of violation shall constitute a separate offense. ~~In cases involving environmental pollution, such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury.~~

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-27.1 and subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 32.1-27.1 and subsection C of this section. *When civil charges are based upon environmental pollution, the civil charges shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.*

§ 32.1-171.2. Water Supply Assistance Grant Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Water Supply Assistance Grant Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All interest on funds appropriated as matching funds for moneys available through the federal Safe Drinking Water Act, all penalties and charges directed to this fund by § 32.1-27, § 32.1-175.01 and § 32.1-176, and all other funds from any public or private source directed to the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes found in subsection B. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner at the direction of the Board.

B. The Board, subject to available funds, may make Water Supply Assistance Grants from the Fund to localities and the owners of waterworks to assist in the provision of drinking water. The Board shall develop guidelines establishing the (i) criteria for grant eligibility, (ii) conditions to be included in grants, and (iii) grant distribution priorities. Among the factors that shall be included in the criteria for grant eligibility and in the grant distribution priorities shall be the financial condition of the locality wherein a grant is sought.

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60 *C. The Administrative Process Act (§ 9-6.14.1 et seq.) shall not apply to the development of guidelines*
61 *or the issuance of grants from the Fund. However, the process for development of the guidelines by the*
62 *Board shall include (i) the use of an advisory committee composed of interested parties, (ii) a minimum*
63 *sixty day public comment period on draft guidelines followed by a public hearing, (iii) written responses*
64 *to all comments received, and (iv) notice of the availability of draft guidelines and final guidelines to all*
65 *who request such notice.*

66 § 32.1-175.01. Issuance of special orders.

67 Notwithstanding any other provision of law and to the extent consistent with federal requirements,
68 following a proceeding as provided in § 9-6.14:11, the Board may issue a special order that may include
69 a civil penalty against an owner who violates this article or any order or regulation adopted thereto by
70 the Board. The issuance of a special order shall be considered a case decision as defined in § 9-6.14:4.
71 *Civil penalties collected pursuant to this section shall be paid into the state treasury and credited to the*
72 *Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.*

73 § 32.1-176. Penalty.

74 In addition to the provisions of § 32.1-27, any owner who violates any provisions of this article or
75 any order or regulation adopted pursuant thereto shall, upon such finding by a court of competent
76 jurisdiction, be assessed a civil penalty of not more than \$5,000 for each day of such violation. All
77 penalties under this section shall be recovered in a civil action brought by the Attorney General in the
78 name of the Commonwealth. *Civil penalties collected pursuant to this section shall be paid into the*
79 *state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.*