

HOUSE BILL NO. 769

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions

on February 8, 2022)

(Patron Prior to Substitute--Delegate Hodges)

A BILL to amend and reenact §§ 32.1-164 and 62.1-44.15:72 of the Code of Virginia, relating to Department of Health; onsite sewage treatment system pump-out oversight; certain localities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-164 and 62.1-44.15:72 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare. The Board shall also have supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage systems as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative

27 discharging sewage system, that the applicant present an executed maintenance contract. Such contract
28 shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit
29 issued by the State Water Control Board.

30 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment
31 and disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the
32 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be
33 designed to protect the public health and promote the public welfare and may include, without limitation:

34 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,
35 installation, modification or operation of a sewerage system or treatment works except in those instances
36 where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

37 2. Criteria for the granting or denial of such permits.

38 3. Standards for the design, construction, installation, modification and operation of sewerage
39 systems and treatment works for permits issued by the Commissioner.

40 4. Standards governing disposal of sewage on or in soils.

41 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

42 a. Public and private wells supplying water for human consumption,

43 b. Lakes and other impounded waters,

44 c. Streams and rivers,

45 d. Shellfish waters,

46 e. Ground waters,

47 f. Areas and places of human habitation,

48 g. Property lines.

49 6. Standards as to the adequacy of an approved water supply.

50 7. Standards governing the transportation of sewage.

51 8. A prohibition against the discharge of untreated sewage onto land or into waters of the
52 Commonwealth.

53 9. A requirement that such residences, buildings, structures and other places designed for human
54 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

55 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not
56 permitted through the then current sewage handling and disposal regulations, to treat and dispose of
57 sewage as effectively as approved methods.

58 11. Standards for inspections of and requirements for maintenance contracts for alternative
59 discharging sewage systems.

60 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a
61 requirement that the owner obtain a permit from the Commissioner prior to the construction, installation,
62 modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

63 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage
64 systems.

65 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage
66 system permits.

67 15. Performance requirements for nitrogen discharged from alternative onsite sewage systems that
68 protect public health and ground and surface water quality.

69 16. Consideration of the impacts of climate change on proposed treatment works based on research
70 and analysis from the Center for Coastal Resources Management at the Virginia Institute of Marine
71 Science at The College of William and Mary in Virginia.

72 C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an
73 alternative discharging sewage system permit with the Department. Funds received in payment of such
74 charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a
75 special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the
76 purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite
77 Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

78 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose
79 incomes are below the federal poverty guidelines established by the United States Department of Health

80 and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage
81 system. If the Department denies the permit for land on which the applicant seeks to construct his principal
82 place of residence, then such fee shall be refunded to the applicant.

83 From such funds as are appropriated to the Department from the special fund, the Board shall
84 apportion a share to local or district health departments to be allocated in the same ratios as provided for
85 the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the
86 local or district health departments on a quarterly basis.

87 D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment
88 and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing
89 standards, give due consideration to economic costs of such standards in accordance with the applicable
90 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

91 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of
92 alternative discharging sewage systems as may be required by the Board. The funds received in payment
93 of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems
94 necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10
95 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-
96 164.1:01.

97 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose
98 incomes are below the federal poverty guidelines established by the United States Department of Health
99 and Human Services.

100 F. Any owner who violates any provision of this section or any regulation of the Board of Health
101 or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply
102 with any order of the Board of Health or any special final order of the State Water Control Board shall be
103 subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

104 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its
105 agent may initiate a civil action against any user or users of an alternative discharging sewage system to

106 recover that portion of any civil penalty imposed against the owner which directly resulted from violations
107 by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

108 G. The Board shall establish and implement procedures for issuance of letters recognizing the
109 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The
110 Board may require that a survey plat be included with an application for such letter. Such letters shall
111 state, in language determined by the Office of the Attorney General and approved by the Board, the
112 appropriateness of the soil for an onsite sewage system; no system design shall be required for issuance
113 of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the
114 jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located so as
115 to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale
116 or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the
117 property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance,
118 there has been a substantial, intervening change in the soil or site conditions where the onsite sewage
119 system is to be located. The Board, Commissioner, and the Department shall accept evaluations from
120 licensed onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the
121 Board's established procedures for issuance of letters. The Department shall issue such letters within 20
122 working days of the application filing date when evaluations produced by licensed onsite soil evaluators
123 are submitted as supporting documentation. The Department shall not be required to do a field check of
124 the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may
125 conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's
126 environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee
127 established by the Board for the letters' issuance and, upon application for an onsite sewage system permit,
128 shall pay the permit application fee.

129 H. The Board shall establish a program for the operation and maintenance of alternative onsite
130 systems. The program shall require:

131 1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system
132 operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the
133 operation permit;

134 2. The licensed operator to provide a report on the results of the site visit utilizing the web-based
135 system required by this subsection. A fee of \$1 shall be paid by the licensed operator at the time the report
136 is filed. Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to
137 § 32.1-164.8;

138 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance
139 requirements of each system, including its components. The system shall have the capability for pre-
140 notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators shall
141 be required to enter their reports onto the system. The Department of Health shall utilize the system to
142 provide for compliance monitoring of operation and maintenance requirements throughout the state. The
143 Commissioner shall consider readily available commercial systems currently utilized within the
144 Commonwealth; and

145 4. Any additional requirements deemed necessary by the Board.

146 I. The Board shall promulgate regulations governing the requirements for maintaining alternative
147 onsite sewage systems.

148 J. The Board shall establish a uniform schedule of civil penalties for violations of (i) regulations
149 promulgated pursuant to subsection B and (ii) onsite treatment system pump-out requirements
150 promulgated pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities in
151 which compliance with such onsite treatment system pump-out requirements is managed and enforced by
152 the Department that are not remedied within 30 days after service of notice from the Department. Civil
153 penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and
154 Training Fund established pursuant to § 32.1-248.3.

155 This schedule of civil penalties shall be uniform for each type of specified violation, and the
156 penalty for any one violation shall be not more than \$100 for the initial violation and not more than \$150
157 for each additional violation. Each day during which the violation is found to have existed shall constitute

158 a separate offense. However, specified violations arising from the same operative set of facts shall not be
159 charged more than once in any 10-day period, and a series of specified violations arising from the same
160 operative set of facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply
161 to unoccupied structures which do not contribute to the pollution of public or private water supplies or the
162 contraction or spread of infectious, contagious, or dangerous diseases. The Department may pursue other
163 remedies as provided by law; however, designation of a particular violation for a civil penalty pursuant to
164 this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to
165 contribute to the pollution of public or private water supplies or the contraction or spread of infectious,
166 contagious, or dangerous diseases.

167 The Department may issue a civil summons ticket as provided by law for a scheduled violation.
168 Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or
169 in writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing may
170 enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

171 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit
172 liability, the violation shall be tried in the general district court with jurisdiction in the same manner and
173 with the same right of appeal as provided for by law. In any trial for a scheduled violation, the Department
174 shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator.
175 An admission of liability or finding of liability under this section shall not be deemed an admission at a
176 criminal proceeding.

177 This section shall not be interpreted to allow the imposition of civil penalties for activities related
178 to land development.

179 K. The Department shall establish procedures for requiring a survey plat as part of an application
180 for a permit or letter for any onsite sewage or alternative discharging sewage system, and for granting
181 waivers for such requirements. In all cases, it shall be the landowner's responsibility to ensure that the
182 system is properly located as permitted.

183 L. Effective July 1, 2023, requirements promulgated under the Chesapeake Bay Preservation Act
184 (§ 62.1-44.15:67 et seq.) directly related to compliance with onsite sewage treatment system pump-outs

185 shall be managed and enforced by the Department in Accomack, Essex, Gloucester, King and Queen,
186 King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and
187 Westmoreland Counties, and the incorporated towns within those counties. Licensed operators conducting
188 onsite sewage treatment system pump-outs pursuant to requirements promulgated under the Chesapeake
189 Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities managed and enforced by the Department shall
190 provide a report on the results of the site visit using a web-based reporting system developed by the
191 Department. Any person who violates the onsite treatment system pump-out requirements promulgated
192 pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in a locality in which
193 compliance with such onsite treatment system pump-out requirements is managed and enforced by the
194 Department is guilty of a Class 3 misdemeanor.

195 **§ 62.1-44.15:72. Board to develop criteria.**

196 A. In order to implement the provisions of this article and to assist counties, cities, and towns in
197 regulating the use and development of land and in protecting the quality of state waters, the Board shall
198 promulgate regulations that establish criteria for use by local governments to determine the ecological and
199 geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations
200 that establish criteria for use by local governments in granting, denying, or modifying requests to rezone,
201 subdivide, or use and develop land in these areas.

202 B. In developing and amending the criteria, the Board shall consider all factors relevant to the
203 protection of water quality from significant degradation as a result of the use and development of land.
204 The criteria shall incorporate measures such as performance standards, best management practices, and
205 various planning and zoning concepts to protect the quality of state waters while allowing use and
206 development of land consistent with the provisions of this chapter. The criteria adopted by the Board,
207 operating in conjunction with other state water quality programs, shall encourage and promote (i)
208 protection of existing high quality state waters and restoration of all other state waters to a condition or
209 quality that will permit all reasonable public uses and will support the propagation and growth of all
210 aquatic life, including game fish, that might reasonably be expected to inhabit them; (ii) safeguarding of
211 the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv)

212 reduction of existing pollution; (v) preservation of mature trees or planting of trees as a water quality
213 protection tool and as a means of providing other natural resource benefits; (vi) coastal resilience and
214 adaptation to sea-level rise and climate change; and (vii) promotion of water resource conservation in
215 order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

216 C. Prior to the development or amendment of criteria, the Board shall give due consideration to,
217 among other things, the economic and social costs and benefits that can reasonably be expected to obtain
218 as a result of the adoption or amendment of the criteria.

219 D. In developing such criteria the Board may consult with and obtain the comments of any federal,
220 state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and
221 development of land or the protection of water. The Board shall give due consideration to the comments
222 submitted by such federal, state, regional, or local agencies.

223 E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay
224 Preservation Area that allows the owner of an ~~on-site~~ onsite sewage treatment system not requiring a
225 Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof of septic
226 tank pump-out shall require such owner to have such documentation certified by an operator or ~~on-site~~
227 onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being
228 qualified to operate, maintain, or design ~~on-site~~ onsite sewage systems.

229 F. In developing such criteria, the Board shall not require the designation of a Resource Protection
230 Area (RPA) as defined according to the criteria developed by the Board, adjacent to a daylighted stream.
231 However, a locality that elects not to designate an RPA adjacent to a daylighted stream shall use a water
232 quality impact assessment to ensure that proposed development on properties adjacent to the daylighted
233 stream does not result in the degradation of the stream. The water quality impact assessment shall (i) be
234 consistent with the Board's criteria for water quality assessments in RPAs, (ii) identify the impacts of the
235 proposed development on water quality, and (iii) determine specific measures for the mitigation of those
236 impacts. The objective of this assessment is to ensure that practices on properties adjacent to daylighted
237 streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. The
238 specific content for the water quality impact assessment shall be established and implemented by any

239 locality that chooses not to designate an RPA adjacent to a daylighted stream. Nothing in this subsection
240 shall limit a locality's authority to include a daylighted stream within the extent of an RPA.

241 G. Effective July 1, 2014, requirements promulgated under this article directly related to
242 compliance with the erosion and sediment control and stormwater management provisions of this chapter
243 and regulated under the authority of those provisions shall cease to have effect.

244 H. Effective July 1, 2023, requirements promulgated under this article directly related to
245 compliance with onsite sewage system pump-outs shall be managed and enforced by the Department of
246 Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex,
247 Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns
248 within those counties.

249 **2. That the Department of Health (the Department) shall provide outreach and education to**
250 **homeowners to ensure compliance with onsite sewage treatment system pump-out requirements**
251 **adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of**
252 **Virginia). The Department shall provide to the Chairmen of the House Committee on Health,**
253 **Welfare and Institutions and the Senate Committee on Education and Health an interim report by**
254 **December 1, 2024, and a final report by December 1, 2025, on compliance with such onsite sewage**
255 **treatment system pump-out requirements in the localities specified in subsection L of § 32.1-164 of**
256 **the Code of Virginia, as created by this act, and subsection H of § 62.1-44.15:72 of the Code of**
257 **Virginia, as created by this act, and the incorporated towns within such localities. Such reports shall**
258 **also include recommendations for improvement improve compliance with onsite sewage treatment**
259 **system pump-out requirements adopted pursuant to the Chesapeake Bay Preservation Act.**

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