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HOUSE BILL NO. 2031

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 32.1-164 of the Code of Virginia and to repeal § 32.1-164.8 of the Code of Virginia, relating to sewage disposal; alternative onsite systems; elimination of report filing fee.

Patron—Orrock

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-164 of the Code of Virginia is 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 discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control Board.

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

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

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

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

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

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

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

b. Lakes and other impounded waters,

c. Streams and rivers,

d. Shellfish waters,

e. Ground waters,

f. Areas and places of human habitation,

g. Property lines.

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

7. Standards governing the transportation of sewage.

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

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

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

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

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

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

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

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

69 16. Consideration of the impacts of climate change on proposed treatment works based on research and
70 analysis from the Center for Coastal Resources Management at the Virginia Institute of Marine Science at
71 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 alternative
73 discharging sewage system permit with the Department. Funds received in payment of such charges shall be
74 transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be
75 appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying
76 out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage
77 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 incomes
79 are below the federal poverty guidelines established by the United States Department of Health and Human
80 Services or when the application is for a pit privy or the repair of a failing onsite sewage system. If the
81 Department denies the permit for land on which the applicant seeks to construct his principal place of
82 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 apportion a
84 share to local or district health departments to be allocated in the same ratios as provided for the operation of
85 such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health
86 departments on a quarterly basis.

87 D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and
88 disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards,
89 give due consideration to economic costs of such standards in accordance with the applicable provisions of
90 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 alternative
92 discharging sewage systems as may be required by the Board. The funds received in payment of such fees
93 shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the
94 Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be
95 credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

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

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

103 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent
104 may initiate a civil action against any user or users of an alternative discharging sewage system to recover
105 that portion of any civil penalty imposed against the owner which directly resulted from violations by the user
106 or users of any applicable federal, state, or local laws, regulations, or ordinances.

107 G. The Board shall establish and implement procedures for issuance of letters recognizing the
108 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The Board
109 may require that a survey plat be included with an application for such letter. Such letters shall state, in
110 language determined by the Office of the Attorney General and approved by the Board, the appropriateness
111 of the soil for an onsite sewage system; no system design shall be required for issuance of such letter. The
112 letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part
113 of the site or proposed site of the onsite sewage system is to be located so as to be a binding notice to the
114 public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is
115 the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued
116 on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial,
117 intervening change in the soil or site conditions where the onsite sewage system is to be located. The Board,
118 Commissioner, and the Department shall accept evaluations from licensed onsite soil evaluators for the
119 issuance of such letters, if they are produced in accordance with the Board's established procedures for

120 issuance of letters. The Department shall issue such letters within 20 working days of the application filing
121 date when evaluations produced by licensed onsite soil evaluators are submitted as supporting
122 documentation. The Department shall not be required to do a field check of the evaluation prior to issuing
123 such a letter or a permit based on such letter; however, the Department may conduct such field analyses as
124 deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in
125 lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and,
126 upon application for an onsite sewage system permit, shall pay the permit application fee.

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

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

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

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

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

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

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

153 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for
154 any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each
155 additional violation. Each day during which the violation is found to have existed shall constitute a separate
156 offense. However, specified violations arising from the same operative set of facts shall not be charged more
157 than once in any 10-day period, and a series of specified violations arising from the same operative set of
158 facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply to unoccupied
159 structures which do not contribute to the pollution of public or private water supplies or the contraction or
160 spread of infectious, contagious, or dangerous diseases. The Department may pursue other remedies as
161 provided by law; however, designation of a particular violation for a civil penalty pursuant to this section
162 shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to
163 the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or
164 dangerous diseases.

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

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

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

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

180 L. Effective July 1, 2023, requirements promulgated under the Chesapeake Bay Preservation Act (§

181 62.1-44.15:67 et seq.) directly related to compliance with onsite sewage treatment system pump-outs shall be
182 managed and enforced by the Department in Accomack, Essex, Gloucester, King and Queen, King William,
183 Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties,
184 and the incorporated towns within those counties. Licensed operators conducting onsite sewage treatment
185 system pump-outs pursuant to requirements promulgated under the Chesapeake Bay Preservation Act (§
186 62.1-44.15:67 et seq.) in localities managed and enforced by the Department shall provide a report on the
187 results of the site visit using a web-based reporting system developed by the Department. Any person who
188 violates the onsite treatment system pump-out requirements promulgated pursuant to the Chesapeake Bay
189 Preservation Act (§ 62.1-44.15:67 et seq.) in a locality in which compliance with such onsite treatment
190 system pump-out requirements is managed and enforced by the Department is guilty of a Class 3
191 misdemeanor.

192 **2. That § 32.1-164.8 of the Code of Virginia is repealed.**