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SENATE BILL NO. 923

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 28, 2025)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 62.1-44.15:22, as it is currently effective and as it may become effective, of the Code of Virginia, relating to Virginia Water Protection Permit; interbasin transfers of water prohibited; sunset.

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:22, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:22. (For contingent expiration date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.

A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses.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. 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.

B. Notwithstanding any other provision, 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 § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions 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 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.

D. *Notwithstanding any other provision of law, the Department shall not issue a Virginia Water Protection Permit for a surface water withdrawal if more than six million gallons of water per day of the withdrawal will be returned to a different major river basin. The Department is encouraged to develop criteria for considering Virginia Water Protection Permit applications for surface water withdrawals that propose interbasin transfers. For purposes of this subsection, "major river basin" includes the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, and the Tennessee-Big Sandy River Basin. The provisions of this subsection shall not apply to any lawful surface water withdrawals in existence on July 1, 2025.*

§ 62.1-44.15:22. (For contingent effective date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.

A. 1. Conditions contained in a Virginia Water Protection Permit may include the volume of water 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. 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.

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 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. 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, 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 other provisions of this section. The application for 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.

D. *Notwithstanding any other provision of law, the Department shall not issue a Virginia Water Protection Permit for a surface water withdrawal if more than six million gallons of water per day of the withdrawal will be returned to a different major river basin. The Department is encouraged to develop criteria for considering Virginia Water Protection Permit applications for surface water withdrawals that propose interbasin transfers. For purposes of this subsection, "major river basin" includes the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, and the Tennessee-Big Sandy River Basin. The provisions of this subsection shall not apply to any lawful surface water withdrawals in existence on July 1, 2025.*

2. That the Department of Environmental Quality (the Department) shall convene a work group to develop recommendations for the criteria to be utilized for Virginia Water Protection Permits for surface water withdrawals that propose interbasin transfers. Such work group shall include representatives from agriculture, forestry, conservation groups, the Virginia Association of Counties, the Virginia Municipal League, the Virginia Association of Municipal Drinking Water, and other groups as determined by the Department. The Department shall report the work group's recommendations to the Chairmen of the Senate Committees on Agriculture, Conservation and Natural Resources and Finance and Appropriations and the House Committees on Agriculture, Chesapeake and Natural Resources and Appropriations by December 1, 2026.

3. That the provisions of the first enactment of this act shall expire on January 1, 2027.