

Hampton Roads Planning District Commission Summary Minutes of November 16, 2017

The November 16, 2017 Meeting of the Hampton Roads Planning District Commission was called to order by the Chair at 12:30 p.m. in the Regional Boardroom, 723 Woodlake Drive, Chesapeake, Virginia, with the following in attendance:

Commissioners in Attendance

Dr. Ella P. Ward, Chair (CH)
Michael Hipple, Vice Chair (JC)
Randy Martin, Treasurer (FR)
James Baker (CH)
Robert Geis (CH)
Debbie Ritter (CH)
Barry Cheatham (FR)
J. Brent Fedors (GL)
Rex Alphin (IW)
Randy Keaton (IW)
McKinley Price (NN)*
Cynthia Rohlf (NN)
Kenneth Alexander (NO)*
Doug Smith (NO)*

David Hux (PQ)
Randy Wheeler (PQ)
Michael Johnson (SH)
Barry Porter (SH)
Peter Stephenson (SM)
Tyrone Franklin (SY)
Dave Hansen (VB)
Louis R. Jones (VB)
Robert Dyer (VB)*
Barbara Henley (VB)
Marvin Collins (WM)
Neil Morgan (YK)
Thomas Shepperd, Jr. (YK)

Commissioners Absent:

Lonnie Craig (CH)
Phillip Bazzani (GL)
Donnie Tuck (HA)
Mary Bunting (HA)
James Gray (HA)
Bryan Hill (JC)
Sharon Scott (NN)
Mamie Johnson (NO)
Andria McClellan (NO)
Thomas Smigiel (NO)

John Rowe (PO)
Dr. Lydia Pettis-Patton
T. Carter Williams (SM)
Linda Johnson (SU)
Patrick Roberts (SU)
John Seward (SY)
William Sessoms (VB)
Ben Davenport (VB)
John Uhrin (VB)
Paul Freiling (WM)

Executive Director:

Robert A. Crum, Jr.

*Late arrival or early departure.

Others Recorded Attending:

Roland Davis (CH); Brian DeProfio, Brian Stilley (NN); Doug Beaver; Thelma Drake (NO); Mark Geduldig-Yatrofsky (Portsmouth City Watch); Jaclyn Lee (Wavy TV 10); Citizens: Donna Sayegh; Staff: Keith Cannady, Shirley Core, Katie Cullipher, Rebekah Eastep, KC Filippino, Andrea Gayer, Ashley Gordon, Greg Grootendorst, Whitney Katchmark, Sara Kidd, Sharon Lawrence, Mike Long, Ben McFarlane, Camelia Ravanbakht, John Sadler, Matt Smith, Jill Sunderland, Joe Turner, Chris Vaigneur, Beth Vandell.

Approval/Modification of Agenda

Chair Ward requested modifications or additions to the agenda. Hearing none Commissioner Thomas Shepperd Moved to approve the agenda; seconded by Vice Chair Michael Hipple. The Motion Carried.

Submitted Public Comments

Mr. Robert Crum, HRPDC/HRTPO Executive Director, indicated there were no Submitted Public Comments and asked to proceed to the Public Comment period.

Public Comment

Ms. Donna Sayegh spoke about the Chief Administrative Officers (CAOs) meeting that was held on November 1st. She expressed her disapproval about not being notified by Portsmouth City Council of the meeting, its location and cost. She also quoted text from Noah Webster's article in Wallbuilders entitled, *Advice to the Young and Moral Catechism*. She used it as an example to express concern about the communication lines between Portsmouth City Council and its citizens.

Councilman Roland Davis remarked favorably on the network of people who supported the broadband effort. He stated that he sincerely believes that the initiative will have a substantial effect in the economic development in the communities of Hampton Roads. He thanked them for their support and enthusiasm as the initiative makes the region the digital port of the world.

Commissioner Doug Smith Arrives

Executive Director's Report

Mr. Crum directed the Commission to a handout included in their agenda packet entitled, *Hampton Roads 2018 Regional Legislative Priorities*. The handout was approved at the HRTPO/HRPDC board meetings held on October 19, 2017. He noted that the Commission will follow up with research on the real estate disclosure item. Mr. Crum also followed up on the recommendations made by the GO Virginia Regional Council regarding the GO Virginia applications supported by the HRPDC. He presented a brief overview of the recommendations:

- Hampton Roads Regional Unmanned Systems Initiative - \$150,000

- Pre-Engineering and develop governance structure
 - Advocacy in acquiring state owned surplus land
- Hampton Roads Regional Broadband Initiative - \$530,000
- Pre-Engineering for Peninsula Fiber Network
 - Final Engineering for Southside Fiber network
 - Governance Structure
 - Transatlantic Cable Strategy

Mr. Crum informed the Commission that the recommendations will go to the State GO Virginia Council on December 12th where they will make a final decision on the first round of funding. He noted that the funding for which recommendations are being made is regional money assigned to GO Virginia Region 5. He informed the Commission that there is a statewide fund of \$11 million for which applications will be resubmitted for the balance of the unmanned systems and/or broadband projects.

Mr. Hansen thanked the members of the HRPDC for their support, and acknowledged Mr. Crum for his leadership in preparing the applications for both the Peninsula and Southside Phase I of the regional broadband strategy. He also acknowledged Commissioners Kenneth Alexander and William Sessoms, Mr. John Reinhart of the Virginia Port Authority, and Bryan Stephens of the Hampton Roads Chamber of Commerce. He noted that if it was not for them, they would not have been as successful. Mr. Hansen pointed out that Hampton Roads is in competition nationally with other regional economies based on connectivity, and it is not an argument of whether or not the region has broadband, but if that bandwidth is affordable and can support the 21st century economy. GO Virginia is used as a vehicle to approach the state in order to provide a better understanding of how important it is to partner together and create regional broadband strategies that will challenge the digital divide, provide small businesses the ability to meet business standards, and entice 21st century jobs for the millennial workforce.

Mr. Crum acknowledged Commissioner Neil Morgan of York County and Jim Noel, Economic Development Director for York County for the efforts they put forth. He stated that the unmanned system proposal is equally impressive with 17 localities supporting the initiative. The concept of revenue sharing will be a model that can be replicated across Virginia.

A video created by the City of Virginia Beach in regards to the broadband initiative was presented to the Commissioners. After the presentation, Mr. Crum concluded his report by acknowledging Ms. Beth Vandell and Mr. Matt Smith of the HRPDC staff for their work in putting the GO Virginia applications together.

Approval of Consent Items

The following items were in the Consent Agenda for approval:

- a. Meeting Minutes – October 16, 2017 Commission Meeting
- b. Transcribed Public Comments October 16, 2017 Commission Meeting

- c. Treasurer's Report of September 2017
- d. Roanoke River Basin Association (RRBA) Status Report
- e. FY17 State Homeland Security Grant Program

Chair Ward called for a motion to approve the Consent Agenda. Commissioner James Baker Moved to approve the Consent Agenda; seconded by Commissioner Louis Jones. The Motion Carried.

FY2017 Audited Financial Statement

Mr. Mike Garber, Partner, PBMares, presented a brief overview on the HRPDC FY17 Audited Financial Statement and federal awards expended in the past year. He reported that there were clean opinions on the financial statements, internal controls, compliance, and federal expenditures of awards. He pointed out that FY16 was their first year performing an audit for the HRPDC, and there were a couple of findings related to schedule and expenditures of federal awards that have been remedied. Mr. Garber noted that PBMares met with the Personnel and Budget (P&B) committee before the meeting, and went through the audit report in great detail.

Chair Ward called for a motion to accept the FY17 Audited Financial Statement. Commissioner James Baker Moved to accept the FY17 Audited Financial Statement; seconded by Commissioner Louis Jones. The Motion Carried.

Chesapeake Bay Total Maximum Daily Load (TMDL) Update

Ms. Whitney Katchmark presented a brief overview of the history of the Chesapeake Bay restoration program. She informed the Commission that the Chesapeake Bay TMDL was established in 2010 and recently the TMDL midpoint assessment had been completed. The midpoint assessment determined that Virginia's targets for nitrogen and phosphorus have been met. The statewide targets were based on implementing 60% of the TMDL reductions by 2017.

The boundary of the Chesapeake Bay Watershed in Hampton Roads primarily covers the urbanized areas and the TMDL impacts in terms of cost and staffing are related to urban development. Virginia's two strategies to meet the urban sector targets were 1) to reduce future loads by applying new regulations to new development and redevelopment and 2) to reduce existing loads by changing the MS4 permits to require localities to build BMPs that remove nutrients from stormwater before it reaches waterways. Virginia has implemented both strategies. In 2010, HRPDC estimated that building the required retrofits would cost \$1.8B. However, localities have been able to sign Memorandums of Understanding with HRSD that provide them with nutrient credits. The credits can be used to meet the localities' MS4 permit requirements for retrofits. The localities can pivot to focus on stormwater infrastructure maintenance, flooding, and local water quality problems instead of rushing to build retrofits by 2025. Local stormwater programs still require the existing fees to fund these efforts but they have avoided additional fee increases that were anticipated to fund the construction of retrofits by the TMDL deadline.

The Virginia Department of Environmental Quality recently stated that it does not intend to revise stormwater regulations for development or alter the MS4 requirements related to the Chesapeake Bay TMDL. However, MS4 permits will be renewed several times before 2025 which creates an opportunity to change the permit requirements.

In conclusion, Ms. Katchmark stated that the focus of the presentation is the enforceable requirements of the Chesapeake Bay TMDL. Within the next few months, DEQ will ask for local input for Phase III. Localities may consider if they want to offer additional voluntary efforts to help Virginia meet the TMDL such as:

- Localities could report retrofits implemented to address local water quality and flooding issues.
- Might promote private property BMPs and retrofits implemented by non-profit watershed groups.
- Offer to promote state cost share program for parcel scale BMPs called Virginia Conservation Assistance Program

Commissioner Alexander departs

Commissioner Shepperd stated that the key part of the requirements is that credit was issued, and asked if there was a bill for the 60% removal piece. Ms. Katchmark stated that there is not a bill on the locality MS4 permits. There is a requirement at the state level in which each state had to do a 60% of a total reduction across wastewater, agriculture, and urban sectors. The target was met in Virginia. She noted that there is no additional cost. Since HRSD is able to offer credits and MOUs have been signed, then the localities are already in compliance with their MS4 requirements. There is no need to spend additional money on more retrofits to meet permit requirements.

Commissioner Shepperd stated that while the retrofit dropped the nitrogen count, it absorbed the cost based on farmers in terms of cattle not fulfilling their obligation. Ms. Katchmark stated that Virginia's approach to this, and reason the state has such robust trading programs, is because they are looking for the most cost effective solution. While some sources of nutrient loads are still out there, the whole point of TMDL is to say, if a certain amount of nutrient reductions are implemented, it will allow the Bay to rebound and be healthy. Reductions are not necessarily needed from all farms and urban developments.

Commissioner Rex Alphin informed the Commission of the nutrient management plans which farmers are required to submit. He also stated that cattle are in agriculture recession, and now there is amazing technology that regulates how much nitrogen and phosphate to put out for particular tractors.

Commissioner Dave Hansen stated that there are two things that could potentially earn the City of Virginia Beach credit for nutrients and sediments: dredging and oysters. He stated that there are many environmental organizations working diligently to get credit for oysters. He also stated that dredging is environmentally beneficial because every time mud is scooped from the Lynnhaven River, it contains nitrogen and phosphorus. Canals, drainage ditches, BMP lakes and ponds within local cities also contain phosphorous and

nitrogen, and remove sediment that makes its way to the bodies of water of the United States where everything is deposited. Mr. Hansen stated that it will take a region to continue to garner more credits because this is being done as a part of maintenance and operation of local stormwater systems.

Commissioner Robert Dyer departs

Hurricane Harvey: Evaluation of Flooding Impacts

Ms. Katchmark presented an overview of the impact of Hurricane Harvey to the Commission to open up conversation for collaboration on potential policies or tools for the Hampton Roads region. She informed the Commission that in Texas during Hurricane Harvey, over 40 inches of rain fell in a 48 hour period. In an average year, the state normally gets 50 inches of rain for the whole year. She stated that one of the criticisms is that some models that predict coastal flooding focus just on storm surge. In Hampton Roads during Hurricane Matthew, there was 11 inches of rain in a 24 hour period. That event demonstrated how rainfall can create flooding in different places than expected. It would be very informative to understand where it floods just from storm surge versus extreme precipitation, when both factors are combined, whether or not the wind is blowing in a specific direction, or if it rained a lot two weeks prior to the storm. She stated that the information is not readily available, and suggested creating a regional model that could capture that information. There is a model called Storm Sense developed by Derek Loftus at the Virginia Institute of Marine Science (VIMS) that forecasts flooding from several of these factors. However, the model is not setup to be an operational tool to be used by staff in all localities and it is still under development. She noted that the Commonwealth Center for Recurrent Flooding Resiliency (CCRFR) is asking for input on regional research needs. However, the region has not identified this as a priority.

Ms. Katchmark noted that Hurricane Harvey had significant impacts outside the flood plain in Houston. She stated that 15% of homes that were flooded did not have flood insurance. Federal Emergency Management Agency (FEMA) flood hazard maps determine where flood insurance is required. However, the maps can be wrong because of poor methodology or because the map is out of date. She also noted that nature sometimes delivers a storm bigger than expected, and low risk areas turn out to be risky.

She presented potential approaches for flood risk outside of floodplains:

- Make better Maps
 - Exert more political pressure to improve FEMA's methodology and adequately fund the map updates
- Convince people not to trust the maps
 - Public Outreach campaign
 - Buy insurance even if it isn't required

Ms. Katchmark briefly spoke on buyouts stating that Harris County, TX spent over \$340 million buying homes that were flooded. There has been a lot of debate about funding buyouts compared to funding structural flood protection infrastructure. In the last ten years, Hampton Roads has received about \$21 million in FEMA funds related to flooding. About \$5 million of the funds were used for buyouts. A map of the flood gates, stormwater

pump stations, and seawalls was presented to illustrate the limited investment in Hampton Roads. She provided a few potential approaches:

- Consolidate lists of volunteers to identify magnitude of need
 - Work with VDEM to prioritize.
 - Exert political pressure for more state or federal funding.
- Consolidate proposed structural flood control projects to convey progress and magnitude of need
 - Exert political pressure for more state or federal funding.
 - Public education on policy choices and consequences.

Ms. Katchmark stated that Hampton Roads has more robust stormwater regulations than Houston, but the focus is on water quality. Ms. Katchmark stated that there are regulations in place that ensure new developments do not contribute to flooding, but there have been instances where new development drainage ties into existing systems, and the systems may not be big enough to handle storms. She provided a list of questions related to imperviousness and storage in Hampton Roads:

- Should we use roads for storage?
- Could VDOT do more to help store water?
- Is there a plan to ensure evacuation routes will not be used for storage?

She also provided some potential approaches:

- Reduce imperviousness requirements
 - Revise local ordinances to minimize parking and road widths
- Design stormwater systems and roads for the future
 - Incorporate sea level rise and changing rainfall patterns
 - Require VDOT's designs to incorporate more flood mitigation features

Ms. Katchmark concluded by stating that the coastal resiliency program is relatively new to the HRPDC, and it would be helpful to get feedback on how to work through new challenges and evaluate potential solutions.

Chair Ward informed the Commission that she would be meeting with Mr. Crum and Commissioner John Rowe of Portsmouth to address concerns about flooding, insurance and raising homes.

Commissioner Tyrone Franklin thanked Ms. Katchmark for her presentation and stated that it was very thorough and informative. Commissioner Randy Wheeler stated that the region can make the most effective use of resources by working on issues of federal policy. He also stated that while there are stormwater rules relating to neighborhoods, the individual lot basis are very limited. He noted that there are a lot of individual lot projects. He suggested using the region's collective voice and wisdom to provide input on regional stormwater issues.

Commissioner Debbie Ritter stated that nothing influences public policy better than public input. She suggested disseminating the information more widely to get better regional input. She stated that there is always conflict when you try to upgrade your development requirements; there is always a natural conflict between public necessity and the development of the community. She also stated that sometimes information is not always user friendly for the public, and the communication should be made clearer.

Commissioner Neil Morgan stated that one of the unique capabilities of the HRPDC is the ability to integrate economic considerations with regulatory and design type of considerations. He suggested that the Coastal Resiliency Committee provide input on how the stormwater issues economically impact the region.

Commissioner Randy Keaton stated that people tend to believe the maps that are provided to them by FEMA, but do not realize that those maps are imperfect. He agreed with Commissioner Morgan that this is an economic issue and a matter of risk. Someone who is not mapped in the flood zone, and suddenly becomes remapped may become upset. However it would provide better mapping. He noted that someone who has to acquire resources to rebuild a house because they do not have flood insurance does not have any other options.

Commissioner Baker stated an important component is public awareness. In many cases, flood insurance is not expensive, but the vast majority of people buy a standard policy. They are totally unaware that there is an exclusion that limits coverage. He stated that educating people on flood issues will be invaluable.

Commissioner Marvin Collins stated that there needs to be regional conversation because the water which runs out of Williamsburg and into James City County or York County can impact their flooding conditions. He encouraged the Commission to look at the stormwater issues because the impervious surface and the rate at which water gets to other places can be important.

Commissioner McKinley Price departs

Mr. Crum highlighted the coastal resiliency program and informed the Commission that it is a new program. He suggested that the CAO Committee review the input provided by Ms. Katchmark and the HRPDC and provide a strategic direction for the Commission's endorsement. He stated that if that sounds like a fair approach, then the CAOs could proceed with that strategy in order to make regional progress. There was consensus among HRPDC members to proceed with this approach.

HRPDC Three Month Tentative Schedule

Mr. Crum noted the three month tentative schedule.

Advisory Committee Summaries

Mr. Crum highlighted the Advisory Committee Summaries section of the agenda.

For Your Information

Mr. Crum noted the GO Virginia Unmanned Systems Proposal and Broadband Initiative summary information. He also noted a Letter from Captain R.J. Meadows, US Navy, regarding the availability of the Final Environmental Assessment (EA) evaluating the potential environmental impacts from transitioning the remaining F/A-18A/C/D Hornet Aircraft, and PB Mares Correspondence.

Old/New Business

There was no old or new business.

Adjournment

With no further business to come before the Hampton Road Planning District Commission, the meeting adjourned at 1:48 p.m.

Ella P. Ward
Chair

Robert A. Crum, Jr.
Executive Director

**Transcribed Public Comments of the
November 16, 2017 HRPDC Commission Meeting**

Ms. Donna Sayegh: *Good Afternoon. My name is Donna Sayegh, and I live in Portsmouth. In the agenda, there is a report that there was a Regional Chief Administrative Officers (CAO) committee meeting on Wednesday, November 1st at the Bide-A-Wee Golf Course Pavilion in Portsmouth. Our city manager attends these meeting representing the people of Portsmouth. There was no communication from her to let the people know that she was to attend this meeting or what was discussed at this meeting after it was attended. The people need to know everything going on regarding the activities of the region. The regional government has taken away the local government's people the right and duty to self-govern. The other thing I'd like to know is if you all paid to use the Portsmouth Golf Course Pavilion? I'll end with number 39 in Noah Webster's Advice to the young and Moral Catechism. "In all your dealings with the men, let a strict regard to truthfulness and justice govern all your actions. Uprightness in dealings secures confidence and the confidence of our fellow men is the basis of reputation, an often a source of prosperity. Men are always ready to assist those whom they can trust, and a good character in men of business often raises them to wealth and distinction. On the other hand hypocrisy, trickery, and want of punctuality and of fairness in trade often sink men into meanness and poverty. Hence we see that the divine commands, which require men to be just are adapted to advance their temporal worldly affairs as well as their spiritual interest. The need for our local leaders to keep our local people informed is the requirement for us, the people, to advance our worldly affairs". In Portsmouth, the communication line is broken where the system of government is moving down the track like a freight train, not stopping for anything but the benefit of the governments federal and state. We need our communication line to be repaired in Portsmouth so that we, the people feel like we are just as equal to the big cities who control the money system in our state. Thanks for listening.*

Mr. Roland Davis: *Thank you Dr. Ward and members of the HRPDC. I came today for one purpose and it was basically on behalf of the private business community, the university community, and numerous civic and professional organizations who supported the broadband effort, to thank you all. The amount of support that the HRPDC has provided, the staff support, the contributions of time and effort in the community, I think crystalized the other morning at Old Dominion University. I know in your agenda it goes into more detail, but I really believe sincerely that this initiative will have a substantial effect in the economic development in our community. There are many citizens, business organizations, and Chief Executive Officers (CEOs) who are vigorously enthusiastic about this. I want to ask for continued support and continued enthusiasm as we make a big difference in Hampton Roads, making it the digi-port of the world. Thank you very much.*

FISCAL YEAR 2018
11/30/17
STATEMENT OF REVENUES AND EXPENDITURES
42% OF FISCAL YEAR COMPLETE

REVENUES	Annual Budget	Previous YTD	Current Month	YTD	% Received /Expended
STATE PDC REVENUE	\$ 151,943	\$ 75,971	\$ -	\$ 75,971	50%
DEQ	65,600	-	60,682	60,682	93%
HOUSING DHCD/ PORTSMOUTH/ CHESAPEAKE	342,292	116,893	19,498	136,391	40%
WATER QUALITY ASSESSMENT	749,902	439,674	-	439,674	59%
VDEM	394,460	21,555	-	21,555	5%
Local Jurisdiction Membership Dues	1,380,621	610,280	36,691	646,971	47%
Local Jurisdiction Programs	2,533,227	990,307	25,458	1,015,764	40%
HRMFFA	43,732	17,500	-	17,500	40%
JLUS	753,000	-	-	-	0%
GO Virginia	-	-	11,318	11,318	0%
SALES, INTEREST & MISC	140,333	49,854	14,970	64,823	46%
VDOT-PL SEC 112	2,378,624	-	-	-	0%
HRTAC	106,500	-	17,303	17,303	16%
HRTAC - SEIS Feasibility Study	3,000,000	-	29,580	29,580	1%
VDRPT 5303	693,944	-	59,668	59,668	9%
SP&R	58,000	-	-	-	0%
SPECIAL CONTRACTS/ DEFERRED	196,824	14,033	-	14,033	7%
Total Revenue	<u>12,989,002</u>	<u>2,336,067</u>	<u>275,168</u>	<u>2,611,235</u>	20%
EXPENDITURES					
PERSONNEL	\$ 4,792,100	\$1,174,870	\$ 303,420	\$ 1,478,290	31%
STANDARD CONTRACTS	175,525	11,974	1,437	13,411	8%
SPECIAL CONTRACTS/PASS THROUGH	7,486,737	441,126	357,020	798,147	11%
OFFICE SERVICES	534,640	79,547	37,846	117,393	22%
INDIRECT COSTS	-	562,586	145,293	707,879	0%
Total Expenses	<u>12,989,002</u>	<u>2,270,103</u>	<u>845,016</u>	<u>3,115,119</u>	24%
TOTALS	<u>\$ -</u>	<u>\$ 65,963</u>	<u>\$ (569,848)</u>	<u>\$ (503,885)</u>	

**HAMPTON ROADS PLANNING DISTRICT COMMISSION
HAMPTON ROADS TRANSPORTATION PLANNING ORGANIZATION
FY2018 SUMMARY **DECEMBER 2017** BUDGET AMENDMENT**

	TOTAL APPROVED BUDGET	Previous AMEND	Current AMEND	FY2018 PROPOSED AMENDED BUDGET				
				TOTAL BUDGET	TPO PASS-THRU	PDC PASS-THRU	TPO OPER BUDGET	PDC OPER BUDGET
REVENUES								
Local Contributions Member Dues (Note 1)	1,380,622			1,380,622			313,397	1,067,225
Local Contributions to Projects	1,670,261			1,670,261		752,883		917,378
Local Special Assessments to Projects	624,600			624,600		585,000		39,600
Miscellaneous Other	33,400			33,400		6,000		27,400
HRMFFA	30,000		5,000	35,000				35,000
HRTAC	106,500			106,500			16,100	90,400
State Allocation to PDCs (Note 2)	151,943			151,943				151,943
Federal & State Grants:								
Transportation	3,130,568		3,000,000	6,130,568	3,065,500		3,065,068	0
Planning District	1,460,965		435,973	1,896,938		1,430,252		466,686
Deferred Revenues from Prior Years	998,432		256,224	1,254,656		1,069,645		185,011
TOTAL REVENUE	9,587,291	0	3,697,197	13,284,488	3,065,500	3,843,780	3,394,565	2,980,643

EXPENDITURES

Personnel (Note 3)	4,774,964		17,137	4,792,101			2,470,661	2,321,440
Standard Contracts (Note 4)	83,915			83,915			44,608	39,307
Special Contracts (Note 5)	204,390			204,390			109,239	95,151
Consulting Svcs (Pass-Through)	3,706,896		3,202,384	6,909,280	3,065,500	3,843,780		0
General Operating Schedules (Note 6)	817,126		477,676	1,294,802			770,057	524,745
TOTAL EXPENDITURES	9,587,291	0	3,697,197	13,284,488	3,065,500	3,843,780	3,394,565	2,980,643

Note 1: Reduced in FY2013 to \$0.80 per capita; Note 2: Reduced from a high of \$366,628 in FY2001;

Note 3: Funding for 46 Full-Time and 1 Part-Time positions; Note 4: Includes space, insurance, equip rent, maint/repairs, legal, and audit;

Note 5: Includes internet/web hosting & design, recycling, public involvement; Note 6: Includes hospitality, consumables, equip, copies, travel, contingencies, etc.

**As Of 12/05/17
12:05 PM**

SUMMARY

Potomac Aquifer recharge monitoring; advisory board; laboratory established; SWIFT Project. Creates an advisory board and a laboratory to monitor the effects of the Sustainable Water Infrastructure for Tomorrow (SWIFT) Project being undertaken by the Hampton Roads Sanitation District (HRSD).

The bill establishes an eight-member advisory board called the Potomac Aquifer Recharge Oversight Committee (the Committee), directing it to ensure that the SWIFT Project is monitored independently. The bill provides that the Committee shall consist of the State Health Commissioner, the Director of the Department of Environmental Quality, the Executive Director of the Hampton Roads Planning District Commission, the two Co-Directors of the Laboratory, the Director of the Occoquan Watershed Monitoring Laboratory, and two Virginia citizens appointed by the Governor, and the bill also provides for two nonvoting members. The Committee is required by the bill to meet at least quarterly during the initial three years of its existence. The bill also authorizes the Committee to appoint a science and technical advisory council and directs the Committee to request funding from HRSD for the first three years of monitoring of the recharge of the aquifer.

The bill also creates the Potomac Aquifer Recharge Monitoring Laboratory (the Laboratory) at Old Dominion University (ODU), placing it under the direction of an ODU faculty member and the co-direction of a faculty member at Virginia Tech. The bill provides that the Laboratory shall monitor the impact of the SWIFT Project on the Potomac Aquifer, manage testing data, and conduct water sampling and analysis.

The bill authorizes both the Commissioner of the Department of Health and the State Water Control Board to issue emergency orders to halt injection or make any change to any facility of the SWIFT Project.

18100685D

HOUSE BILL NO. 211

Offered January 10, 2018

Prefiled December 29, 2017

A BILL to amend and reenact §§ 62.1-266 and 62.1-267 of the Code of Virginia, relating to ground water withdrawal permit; 15-year term.

Patron—Wright

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-266 and 62.1-267 of the Code of Virginia are amended and reenacted as follows: § 62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions, and limitations necessary for the protection of the public welfare, safety, and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten 15 years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which that, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town locality in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

§ 62.1-267. Issuance of special exceptions.

A. The Board may issue a special exceptions exception to allow the withdrawal of ground water in cases the case of an unusual situations where situation in which requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board may consider the amount and

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59 duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the
60 ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any
61 person requesting a special exception shall submit an application to the Board containing such
62 information as the Board shall require by regulation adopted pursuant to this chapter.

63 C. Any special exception issued by the Board shall state the terms pursuant to which the applicant
64 may withdraw ground water, including the amount of ground water that may be withdrawn in any
65 period and the duration of the special exception. No special exception shall be issued for a term
66 exceeding ~~ten~~ 15 years.

67 D. A violation of any term or provision of a special exception shall subject the holder thereof to the
68 same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal
69 permit.

70 E. The Board shall have the power to amend or revoke any special exception after notice and
71 opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or
72 revocation of a ground water withdrawal permit.

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HOUSE BILL NO. 771
Offered January 10, 2018
Prefiled January 9, 2018

A *BILL to amend and reenact § 62.1-44.15, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered § 32.1-175.02 and by adding in Title 62.1 a chapter numbered 26, consisting of sections numbered 62.1-271 through 62.1-274, relating to Potomac Aquifer recharge monitoring; laboratory established; SWIFT Project.*

Patron—Jones, S.C.

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered § 32.1-175.02 and by adding in Title 62.1 a chapter numbered 26, consisting of sections numbered 62.1-271 through 62.1-274, as follows:

§ 32.1-175.02. Potomac Aquifer recharge.

The Commissioner may issue to the Hampton Roads Sanitation District an emergency order pursuant to § 32.1-175 to cease injection or make any change the Commissioner deems necessary to the operation or structure of any facility of the District's Sustainable Water Initiative for Tomorrow Project.

§ 62.1-44.15. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Powers and duties; civil penalties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000 et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments,

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59 investigations and research and may receive in behalf of the Commonwealth any moneys that any such
60 agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall
61 be used only for the purposes for which they are contributed and any balance remaining after the
62 conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

63 (5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of
64 sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of
65 the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and
66 after October 1, 2001, the conduct of the following activities in a wetland: (i) new activities to cause
67 draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or
68 dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration
69 or degradation of existing wetland acreage or functions. However, to the extent allowed by federal law,
70 any person holding a certificate issued by the Board that is intending to upgrade the permitted facility
71 by installing technology, control equipment, or other apparatus that the permittee demonstrates to the
72 satisfaction of the Director will result in improved energy efficiency, reduction in the amount of
73 nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or
74 amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the
75 Department no later than 30 days prior to commencing construction.

76 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a
77 Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a
78 Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of
79 any required monitoring, or other project operations or permit conditions; however, the term shall not
80 exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except
81 that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be
82 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia
83 Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit
84 requirements. Department personnel performing inspections of confined animal feeding operations shall
85 be certified under the voluntary nutrient management training and certification program established in
86 § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification
87 beyond the maximum duration and the certificate shall expire at the end of the term unless an
88 application for a new permit has been timely filed as required by the regulations of the Board and the
89 Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of
90 the previous permit.

91 (5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a
92 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
93 by the regulations of the Board:

94 1. The owner has violated any regulation or order of the Board, any condition of a certificate, any
95 provision of this chapter, or any order of a court, where such violation results in a release of harmful
96 substances into the environment or poses a substantial threat of release of harmful substances into the
97 environment or presents a hazard to human health or the violation is representative of a pattern of
98 serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for
99 or inability to comply with applicable laws, regulations, or requirements;

100 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material
101 fact in applying for a certificate, or in any other report or document required under this law or under the
102 regulations of the Board;

103 3. The activity for which the certificate was issued endangers human health or the environment and
104 can be regulated to acceptable levels by amendment or revocation of the certificate; or

105 4. There exists a material change in the basis on which the permit was issued that requires either a
106 temporary or a permanent reduction or elimination of any discharge controlled by the certificate
107 necessary to protect human health or the environment.

108 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed
109 under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be
110 conditioned upon a demonstration of financial responsibility for the completion of compensatory
111 mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate
112 of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of
113 Engineers requires demonstration of financial responsibility for the completion of compensatory
114 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army
115 Corps of Engineers shall be used to meet this requirement.

116 (6) To make investigations and inspections, to ensure compliance with any certificates, standards,
117 policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to
118 furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In
119 recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State Department of Health shall enter into
120 a memorandum of understanding establishing a common format to consolidate and simplify inspections

121 of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall
 122 ensure that all sewage treatment plants are inspected at appropriate intervals in order to protect water
 123 quality and public health and at the same time avoid any unnecessary administrative burden on those
 124 being inspected.

125 (7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing
 126 of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to
 127 procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this
 128 section shall be by such means as the Board may prescribe.

129 (8a) Except as otherwise provided in Articles 2.4 (§ 62.1-44.15:51 et seq.) and 2.5 (§ 62.1-44.15:67
 130 et seq.) issue special orders to owners (i) who are permitting or causing the pollution, as defined by §
 131 62.1-44.3, of state waters to cease and desist from such pollution, (ii) who have failed to construct
 132 facilities in accordance with final approved plans and specifications to construct such facilities in
 133 accordance with final approved plans and specifications, (iii) who have violated the terms and provisions
 134 of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to
 135 comply with a directive from the Board to comply with such directive, (v) who have contravened duly
 136 adopted and promulgated water quality standards and policies to cease and desist from such
 137 contravention and to comply with such water quality standards and policies, (vi) who have violated the
 138 terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
 139 treatment works to comply with such terms and provisions or (vii) who have contravened any applicable
 140 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
 141 such orders to require any owner to comply with the provisions of this chapter and any decision of the
 142 Board. Except as otherwise provided by a separate article, orders issued pursuant to this subsection may
 143 include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order. The Board may
 144 assess penalties under this subsection if (a) the person has been issued at least two written notices of
 145 alleged violation by the Department for the same or substantially related violations at the same site, (b)
 146 such violations have not been resolved by demonstration that there was no violation, by an order issued
 147 by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of
 148 the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a
 149 hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall
 150 be based upon the severity of the violations, the extent of any potential or actual environmental harm,
 151 the compliance history of the facility or person, any economic benefit realized from the noncompliance,
 152 and the ability of the person to pay the penalty. The Board shall provide the person with the calculation
 153 for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses
 154 penalties pursuant to this subsection. The issuance of a notice of alleged violation by the Department
 155 shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall
 156 include a description of each violation, the specific provision of law violated, and information on the
 157 process for obtaining a final decision or fact finding from the Department on whether or not a violation
 158 has occurred, and nothing in this section shall preclude an owner from seeking such a determination.
 159 Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the
 160 Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that civil penalties
 161 assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14 et seq.) shall
 162 be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11, and except
 163 that civil penalties assessed for violations of Article 2.3 (§ 62.1-44.15:24 et seq.) shall be paid in
 164 accordance with the provisions of § 62.1-44.15:48.

165 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by
 166 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of
 167 the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof,
 168 and they shall become effective not less than 15 days after service as provided in § 62.1-44.12; provided
 169 that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial
 170 danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a
 171 public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it
 172 may issue, without advance notice or hearing, an emergency special order directing the owner to cease
 173 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable
 174 notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency
 175 special order. If an owner who has been issued such a special order or an emergency special order is not
 176 complying with the terms thereof, the Board may proceed in accordance with § 62.1-44.23, and where
 177 the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction
 178 compelling compliance with the emergency special order pending a hearing by the Board. If an
 179 emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a
 180 hearing within 48 hours of the issuance of the injunction.

181 (8c) The provisions of this section notwithstanding, the Board may proceed directly under

182 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
183 promulgated hereunder.

184 (8d) With the consent of any owner who has violated or failed, neglected or refused to obey any
185 regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board
186 may provide, in an order issued by the Board against such person, for the payment of civil charges for
187 past violations in specific sums not to exceed the limit specified in § 62.1-44.32 (a). Such civil charges
188 shall be instead of any appropriate civil penalty which could be imposed under § 62.1-44.32 (a) and
189 shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state
190 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
191 Fund (§ 10.1-2500 et seq.), excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et
192 seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or
193 term or condition of approval relating to or issued under those articles, or civil charges assessed for
194 violations of Article 2.3 (§ 62.1-44.15:24 et seq.), or a regulation, administrative or judicial order, or
195 term or condition of approval relating to or issued under that article.

196 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be
197 construed as limiting or expanding any cause of action or any other remedy possessed by the Board
198 prior to the effective date of said amendments.

199 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and
200 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
201 upon the severity of the violations, the extent of any potential or actual environmental harm, the
202 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
203 the ability of the person to pay the penalty.

204 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without
205 an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent
206 or minimize overflows of sewage from such system, the Board shall provide public notice of and
207 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may
208 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water
209 Act. Any person who comments on the proposed order shall be given notice of any hearing to be held
210 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be
211 heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d),
212 any person who commented on the proposed order may file a petition, within 30 days after the issuance
213 of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the
214 evidence presented by the petitioner in support of the petition is material and was not considered in the
215 issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and
216 make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the
217 petitioner and make available to the public the reasons for such denial, and the petitioner shall have the
218 right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

219 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 as may be required upon
220 requests or applications to the Board, the owner or owners affected to be notified by certified mail as
221 soon as practicable after the Board makes them and such rulings to become effective upon such
222 notification.

223 (10) To adopt such regulations as it deems necessary to enforce the general water quality
224 management program of the Board in all or part of the Commonwealth, except that a description of
225 provisions of any proposed regulation which are more restrictive than applicable federal requirements,
226 together with the reason why the more restrictive provisions are needed, shall be provided to the
227 standing committee of each house of the General Assembly to which matters relating to the content of
228 the regulation are most properly referable.

229 (11) To investigate any large-scale killing of fish.

230 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a
231 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state
232 waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect
233 such settlement with the owner as will cover the costs incurred by the Board and by the Department of
234 Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish
235 destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the
236 Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover
237 from the owner such costs and value, plus any court or other legal costs incurred in connection with
238 such action.

239 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any
240 circuit court within the territory embraced by such political subdivision. If the owner is an
241 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the
242 circuit court of the county in which such establishment is located. If the owner is an individual or group
243 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in

244 which such person or any of them reside.

245 (c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of
 246 the fish killed and the proceedings shall be as though the State Water Control Board were the owner of
 247 the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as
 248 a defense in bar to any such action.

249 (d) The proceeds of any recovery had under this subsection shall, when received by the Board, be
 250 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The
 251 balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries'
 252 management practices as in its judgment will best restore or replace the fisheries' values lost as a result
 253 of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish
 254 or other appropriate species. Any such funds received are hereby appropriated for that purpose.

255 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action
 256 which is now authorized by law by the Board against any owner.

257 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who
 258 adds or applies any chemicals or other substances that are recommended or approved by the State
 259 Department of Health to state waters in the course of processing or treating such waters for public water
 260 supply purposes, except where negligence is shown.

261 (12) To administer programs of financial assistance for planning, construction, operation, and
 262 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

263 (13) To establish policies and programs for effective area-wide or basin-wide water quality control
 264 and management. The Board may develop comprehensive pollution abatement and water quality control
 265 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering
 266 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment
 267 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water
 268 quality management and pollution control plan in the watershed or basin as a whole. In making such
 269 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

270 (14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that
 271 are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or
 272 its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the
 273 purposes of this chapter.

274 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are
 275 protective of state waters and public health as an alternative to directly discharging pollutants into waters
 276 of the state. The requirements shall address various potential categories of reuse and may include
 277 general permits and provide for greater flexibility and less stringent requirements commensurate with the
 278 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation
 279 with the Department of Health and other appropriate state agencies. This authority shall not be construed
 280 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

281 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
 282 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
 283 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net
 284 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and
 285 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

286 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to
 287 §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water
 288 resources between major river basins within the Commonwealth that may impact water basins in another
 289 state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1,
 290 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and
 291 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded
 292 withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to
 293 such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and
 294 receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a
 295 description of how notice shall be provided to interested parties, and (v) any other requirements that the
 296 Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and
 297 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or
 298 expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose
 299 conditions or limitations on the permitted activity.

300 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,
 301 including coordination of the nonpoint source control elements of programs developed pursuant to
 302 certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal
 303 Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to
 304 implement a nonpoint source pollution management program in the Commonwealth, the distribution of

305 assigned funds, the identification and establishment of priorities to address nonpoint source related water
306 quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the
307 development of a program for the prevention and control of soil erosion, sediment deposition, and
308 nonagricultural runoff to conserve Virginia's natural resources.

309 *(19) To issue to the Hampton Roads Sanitation District a special order or emergency special order*
310 *pursuant to subdivisions (8a) and (8b) to cease injection or make any change the Board deems*
311 *necessary to the operation or structure of any facility of the Hampton Roads Sanitation District's*
312 *Sustainable Water Initiative for Tomorrow Project.*

313 **§ 62.1-44.15. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c.**
314 **345) Powers and duties; civil penalties.**

315 It shall be the duty of the Board and it shall have the authority:

316 (1) [Repealed.]

317 (2) To study and investigate all problems concerned with the quality of state waters and to make
318 reports and recommendations.

319 (2a) To study and investigate methods, procedures, devices, appliances, and technologies that could
320 assist in water conservation or water consumption reduction.

321 (2b) To coordinate its efforts toward water conservation with other persons or groups, within or
322 without the Commonwealth.

323 (2c) To make reports concerning, and formulate recommendations based upon, any such water
324 conservation studies to ensure that present and future water needs of the citizens of the Commonwealth
325 are met.

326 (3a) To establish such standards of quality and policies for any state waters consistent with the
327 general policy set forth in this chapter, and to modify, amend, or cancel any such standards or policies
328 established and to take all appropriate steps to prevent quality alteration contrary to the public interest or
329 to standards or policies thus established, except that a description of provisions of any proposed standard
330 or policy adopted by regulation which are more restrictive than applicable federal requirements, together
331 with the reason why the more restrictive provisions are needed, shall be provided to the standing
332 committee of each house of the General Assembly to which matters relating to the content of the
333 standard or policy are most properly referable. The Board shall, from time to time, but at least once
334 every three years, hold public hearings pursuant to § 2.2-4007.01 but, upon the request of an affected
335 person or upon its own motion, hold hearings pursuant to § 2.2-4009, for the purpose of reviewing the
336 standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever
337 the Board considers the adoption, modification, amendment, or cancellation of any standard, it shall give
338 due consideration to, among other factors, the economic and social costs and benefits which can
339 reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended, or
340 cancelled. The Board shall also give due consideration to the public health standards issued by the
341 Virginia Department of Health with respect to issues of public health policy and protection. If the Board
342 does not follow the public health standards of the Virginia Department of Health, the Board's reason for
343 any deviation shall be made in writing and published for any and all concerned parties.

344 (3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or
345 modified, amended, or cancelled in the manner provided by the Administrative Process Act (§ 2.2-4000
346 et seq.).

347 (4) To conduct or have conducted scientific experiments, investigations, studies, and research to
348 discover methods for maintaining water quality consistent with the purposes of this chapter. To this end
349 the Board may cooperate with any public or private agency in the conduct of such experiments,
350 investigations, and research and may receive in behalf of the Commonwealth any moneys that any such
351 agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall
352 be used only for the purposes for which they are contributed and any balance remaining after the
353 conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

354 (5) To issue, revoke, or amend certificates and land-disturbance approvals under prescribed
355 conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or
356 adjacent to state waters; (b) the alteration otherwise of the physical, chemical, or biological properties of
357 state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct of the
358 following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades
359 existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or
360 (iv) new activities that cause significant alteration or degradation of existing wetland acreage or
361 functions. However, to the extent allowed by federal law, any person holding a certificate issued by the
362 Board that is intending to upgrade the permitted facility by installing technology, control equipment, or
363 other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved
364 energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not
365 be required to obtain a new, modified, or amended permit. The permit holder shall provide the
366 demonstration anticipated by this subdivision to the Department no later than 30 days prior to

367 commencing construction.

368 (5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a
 369 Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a
 370 Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of
 371 any required monitoring, or other project operations or permit conditions; however, the term shall not
 372 exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except
 373 that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be
 374 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia
 375 Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit
 376 requirements. Department personnel performing inspections of confined animal feeding operations shall
 377 be certified under the voluntary nutrient management training and certification program established in
 378 § 10.1-104.2. The term of a certificate issued by the Board shall not be extended by modification
 379 beyond the maximum duration and the certificate shall expire at the end of the term unless an
 380 application for a new permit has been timely filed as required by the regulations of the Board and the
 381 Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of
 382 the previous permit.

383 (5b) Any certificate or land-disturbance approval issued by the Board under this chapter may, after
 384 notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for
 385 good cause as may be provided by the regulations of the Board:

386 1. The owner has violated any regulation or order of the Board, any condition of a certificate or
 387 land-disturbance approval, any provision of this chapter, or any order of a court, where such violation
 388 results in a release of harmful substances into the environment, poses a substantial threat of release of
 389 harmful substances into the environment, causes unreasonable property degradation, or presents a hazard
 390 to human health or the violation is representative of a pattern of serious or repeated violations which, in
 391 the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable
 392 laws, regulations, or requirements;

393 2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material
 394 fact in applying for a certificate or land-disturbance approval, or in any other report or document
 395 required under this law or under the regulations of the Board;

396 3. The activity for which the certificate or land-disturbance approval was issued endangers human
 397 health or the environment or causes unreasonable property degradation and can be regulated to
 398 acceptable levels or practices by amendment or revocation of the certificate or land-disturbance approval;
 399 or

400 4. There exists a material change in the basis on which the certificate, land-disturbance approval, or
 401 permit was issued that requires either a temporary or a permanent reduction or elimination of any
 402 discharge or land-disturbing activity controlled by the certificate, land-disturbance approval, or permit
 403 necessary to protect human health or the environment or stop or prevent unreasonable degradation of
 404 property.

405 (5c) Any certificate issued by the Board under this chapter relating to dredging projects governed
 406 under Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 may be
 407 conditioned upon a demonstration of financial responsibility for the completion of compensatory
 408 mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate
 409 of deposit, or a performance bond executed in a form approved by the Board. If the U.S. Army Corps
 410 of Engineers requires demonstration of financial responsibility for the completion of compensatory
 411 mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army
 412 Corps of Engineers shall be used to meet this requirement.

413 (6) To make investigations and inspections, to ensure compliance with the conditions of any
 414 certificates, land-disturbance approvals, standards, policies, rules, regulations, rulings, and orders that it
 415 may adopt, issue, or establish, and to furnish advice, recommendations, or instructions for the purpose of
 416 obtaining such compliance. In recognition of §§ 32.1-164 and 62.1-44.18, the Board and the State
 417 Department of Health shall enter into a memorandum of understanding establishing a common format to
 418 consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the
 419 inspections. The new format shall ensure that all sewage treatment plants are inspected at appropriate
 420 intervals in order to protect water quality and public health and at the same time avoid any unnecessary
 421 administrative burden on those being inspected.

422 (7) To adopt rules governing the procedure of the Board with respect to (a) hearings; (b) the filing of
 423 reports; (c) the issuance of certificates and orders; and (d) all other matters relating to procedure; and to
 424 amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by
 425 such means as the Board may prescribe.

426 (8a) Except as otherwise provided in subdivision (19) and Article 2.3 (§ 62.1-44.15:24 et seq.), to
 427 issue special orders to owners, including owners as defined in § 62.1-44.15:24, who (i) are permitting or

428 causing the pollution, as defined by § 62.1-44.3, of state waters or the unreasonable degradation of
429 property to cease and desist from such pollution or degradation, (ii) have failed to construct facilities in
430 accordance with final approved plans and specifications to construct such facilities in accordance with
431 final approved plans and specifications, (iii) have violated the terms and provisions of a certificate or
432 land-disturbance approval issued by the Board to comply with such terms and provisions, (iv) have
433 failed to comply with a directive from the Board to comply with such directive, (v) have contravened
434 duly adopted and promulgated water quality standards and policies to cease and desist from such
435 contravention and to comply with such water quality standards and policies, (vi) have violated the terms
436 and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned
437 treatment works to comply with such terms and provisions, or (vii) have contravened any applicable
438 pretreatment standard or requirement to comply with such standard or requirement; and also to issue
439 such orders to require any owner to comply with the provisions of this chapter and any decision of the
440 Board. Except as otherwise provided by a separate article, orders issued pursuant to this subdivision may
441 include civil penalties of up to \$ 32,500 per violation, not to exceed \$ 100,000 per order. The Board
442 may assess penalties under this subdivision if (a) the person has been issued at least two written notices
443 of alleged violation by the Department for the same or substantially related violations at the same site,
444 (b) such violations have not been resolved by demonstration that there was no violation, by an order
445 issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the
446 issuance of the first notice of alleged violation, and (d) there is a finding that such violations have
447 occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any
448 penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual
449 environmental harm, the compliance history of the facility or person, any economic benefit realized from
450 the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person
451 with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order
452 that assesses penalties pursuant to this subdivision. The issuance of a notice of alleged violation by the
453 Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged
454 violation shall include a description of each violation, the specific provision of law violated, and
455 information on the process for obtaining a final decision or fact finding from the Department on whether
456 or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a
457 determination. Such civil penalties shall be paid into the state treasury and deposited by the State
458 Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.), except that
459 civil penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or Article 11 (§ 62.1-44.34:14
460 et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § 62.1-44.34:11,
461 and except that civil penalties assessed for violations of subdivision (19) or Article 2.3 (§ 62.1-44.15:24
462 et seq.) shall be paid into the Stormwater Local Assistance Fund in accordance with § 62.1-44.15:29.1.

463 (8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by
464 the Supreme Court in accordance with § 2.2-4020 or, if requested by the person, before a quorum of
465 the Board with at least 30 days' notice to the affected owners, of the time, place, and purpose thereof,
466 and they shall become effective not less than 15 days after service as provided in 62.1-44.12, provided
467 that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial
468 danger to (i) the public health, safety, or welfare, or the health of animals, fish, or aquatic life; (ii) a
469 public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it
470 may issue, without advance notice or hearing, an emergency special order directing the owner to cease
471 such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable
472 notice as to the time and place thereof to the owner, to affirm, modify, amend, or cancel such
473 emergency special order. If an owner who has been issued such a special order or an emergency special
474 order is not complying with the terms thereof, the Board may proceed in accordance with 62.1-44.23,
475 and where the order is based on a finding of an imminent and substantial danger, the court shall issue
476 an injunction compelling compliance with the emergency special order pending a hearing by the Board.
477 If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity
478 for a hearing within 48 hours of the issuance of the injunction.

479 (8c) The provisions of this section notwithstanding, the Board may proceed directly under
480 § 62.1-44.32 for any past violation or violations of any provision of this chapter or any regulation duly
481 promulgated hereunder.

482 (8d) Except as otherwise provided in subdivision (19), subdivision 2 of § 62.1-44.15:25, or
483 § 62.1-44.15:63, with the consent of any owner who has violated or failed, neglected, or refused to obey
484 any regulation or order of the Board, any condition of a certificate, land-disturbance approval, or permit,
485 or any provision of this chapter, the Board may provide, in an order issued by the Board against such
486 person, for the payment of civil charges for past violations in specific sums not to exceed the limit
487 specified in subsection (a) of § 62.1-44.32. Such civil charges shall be instead of any appropriate civil
488 penalty which could be imposed under subsection (a) of § 62.1-44.32 and shall not be subject to the
489 provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the

490 State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.),
 491 excluding civil charges assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10
 492 (§ 62.1-44.34:10 et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or term or
 493 condition of approval relating to or issued under those articles, or civil charges assessed for violations of
 494 Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.5 (§ 62.1-44.15:67 et seq.) or a regulation, administrative or
 495 judicial order, or term or condition of approval relating to or issued under Article 2.3 or 2.5.

496 The amendments to this section adopted by the 1976 Session of the General Assembly shall not be
 497 construed as limiting or expanding any cause of action or any other remedy possessed by the Board
 498 prior to the effective date of said amendments.

499 (8e) The Board shall develop and provide an opportunity for public comment on guidelines and
 500 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
 501 upon the severity of the violations, the extent of any potential or actual environmental harm, the
 502 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
 503 the ability of the person to pay the penalty.

504 (8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without
 505 an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent
 506 or minimize overflows of sewage from such system, the Board shall provide public notice of and
 507 reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may
 508 impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean Water
 509 Act. Any person who comments on the proposed order shall be given notice of any hearing to be held
 510 on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be
 511 heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d),
 512 any person who commented on the proposed order may file a petition, within 30 days after the issuance
 513 of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the
 514 evidence presented by the petitioner in support of the petition is material and was not considered in the
 515 issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and
 516 make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the
 517 petitioner and make available to the public the reasons for such denial, and the petitioner shall have the
 518 right to judicial review of such decision under § 62.1-44.29 if he meets the requirements thereof.

519 (9) To make such rulings under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 as may be required upon
 520 requests or applications to the Board, the owner or owners affected to be notified by certified mail as
 521 soon as practicable after the Board makes them and such rulings to become effective upon such
 522 notification.

523 (10) To adopt such regulations as it deems necessary to enforce the general soil erosion control and
 524 stormwater management program and water quality management program of the Board in all or part of
 525 the Commonwealth, except that a description of provisions of any proposed regulation which are more
 526 restrictive than applicable federal requirements, together with the reason why the more restrictive
 527 provisions are needed, shall be provided to the standing committee of each house of the General
 528 Assembly to which matters relating to the content of the regulation are most properly referable.

529 (11) To investigate any large-scale killing of fish.

530 (a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a
 531 certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state
 532 waters in such quantity, concentration, or manner that fish are killed as a result thereof, it may effect
 533 such settlement with the owner as will cover the costs incurred by the Board and by the Department of
 534 Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish
 535 destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the
 536 Board shall authorize its executive secretary to bring a civil action in the name of the Board to recover
 537 from the owner such costs and value, plus any court or other legal costs incurred in connection with
 538 such action.

539 (b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any
 540 circuit court within the territory embraced by such political subdivision. If the owner is an
 541 establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the
 542 circuit court of the county in which such establishment is located. If the owner is an individual or group
 543 of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in
 544 which such person or any of them reside.

545 (c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of
 546 the fish killed and the proceedings shall be as though the State Water Control Board were the owner of
 547 the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as
 548 a defense in bar to any such action.

549 (d) The proceeds of any recovery had under this subsection shall, when received by the Board, be
 550 applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The

551 balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries'
552 management practices as in its judgment will best restore or replace the fisheries' values lost as a result
553 of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish
554 or other appropriate species. Any such funds received are hereby appropriated for that purpose.

555 (e) Nothing in this subsection shall be construed in any way to limit or prevent any other action
556 which is now authorized by law by the Board against any owner.

557 (f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who
558 adds or applies any chemicals or other substances that are recommended or approved by the State
559 Department of Health to state waters in the course of processing or treating such waters for public water
560 supply purposes, except where negligence is shown.

561 (12) To administer programs of financial assistance for planning, construction, operation, and
562 maintenance of water quality control facilities for political subdivisions in the Commonwealth.

563 (13) To establish policies and programs for effective area-wide or basin-wide water quality control
564 and management. The Board may develop comprehensive pollution abatement and water quality control
565 plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering
566 proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment
567 facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water
568 quality management and pollution control plan in the watershed or basin as a whole. In making such
569 determinations, the Board is to seek the advice of local, regional, or state planning authorities.

570 (14) To establish requirements for the treatment of sewage, industrial wastes, and other wastes that
571 are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or
572 its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the
573 purposes of this chapter.

574 (15) To promote and establish requirements for the reclamation and reuse of wastewater that are
575 protective of state waters and public health as an alternative to directly discharging pollutants into waters
576 of the state. The requirements shall address various potential categories of reuse and may include
577 general permits and provide for greater flexibility and less stringent requirements commensurate with the
578 quality of the reclaimed water and its intended use. The requirements shall be developed in consultation
579 with the Department of Health and other appropriate state agencies. This authority shall not be construed
580 as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

581 (16) To establish and implement policies and programs to protect and enhance the Commonwealth's
582 wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland
583 acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net
584 resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and
585 guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

586 (17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to
587 §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water
588 resources between major river basins within the Commonwealth that may impact water basins in another
589 state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1,
590 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and
591 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded
592 withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to
593 such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and
594 receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a
595 description of how notice shall be provided to interested parties, and (v) any other requirements that the
596 Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and
597 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or
598 expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose
599 conditions or limitations on the permitted activity.

600 (18) To be the lead agency for the Commonwealth's nonpoint source pollution management program,
601 including coordination of the nonpoint source control elements of programs developed pursuant to
602 certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal
603 Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to
604 implement a nonpoint source pollution management program in the Commonwealth, the distribution of
605 assigned funds, the identification and establishment of priorities to address nonpoint source related water
606 quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the
607 development of a program for the prevention and control of soil erosion, sediment deposition, and
608 nonagricultural runoff to conserve Virginia's natural resources.

609 (19) To review for compliance with the provisions of this chapter the Virginia Erosion and
610 Stormwater Management Programs adopted by localities pursuant to § 62.1-44.15:27, the Virginia
611 Erosion and Sediment Control Programs adopted by localities pursuant to subdivision B 3 of §
612 62.1-44.15:27, and the programs adopted by localities pursuant to the Chesapeake Bay Preservation Act

613 (§ 62.1-44.15:67 et seq.). The Board shall develop and implement a schedule for conducting such
 614 program reviews as often as necessary but at least once every five years. Following the completion of a
 615 compliance review in which deficiencies are found, the Board shall establish a schedule for the locality
 616 to follow in correcting the deficiencies and bringing its program into compliance. If the locality fails to
 617 bring its program into compliance in accordance with the compliance schedule, then the Board is
 618 authorized to (i) issue a special order to any locality imposing a civil penalty not to exceed \$ 5,000 per
 619 violation with the maximum amount not to exceed \$ 50,000 per order for noncompliance with the state
 620 program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund
 621 established in § 62.1-44.15:29.1 or (ii) with the consent of the locality, provide in an order issued
 622 against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific
 623 sums not to exceed the limit stated in this subdivision. Such civil charges shall be in lieu of any
 624 appropriate civil penalty that could be imposed under subsection (a) of § 62.1-44.32 and shall not be
 625 subject to the provisions of § 2.2-514. The Board shall not delegate to the Department its authority to
 626 issue special orders pursuant to clause (i). In lieu of issuing an order, the Board is authorized to take
 627 legal action against a locality pursuant to § 62.1-44.23 to ensure compliance.

628 *(20) To issue to the Hampton Roads Sanitation District a special order or emergency special order*
 629 *pursuant to subdivisions (8a) and (8b) to cease injection or make any change the Board deems*
 630 *necessary to the operation or structure of any facility of the Hampton Roads Sanitation District's*
 631 *Sustainable Water Initiative for Tomorrow Project.*

632 CHAPTER 26.

633 POTOMAC AQUIFER RECHARGE MONITORING.

634 § 62.1-271. **Definitions.**

635 *For the purposes of this chapter:*

636 *"Committee" means the Potomac Aquifer Recharge Oversight Committee established pursuant to*
 637 *§ 62.1-272.*

638 *"Department" means the Department of Environmental Quality.*

639 *"HRSD" means the Hampton Roads Sanitation District.*

640 *"Laboratory" means the Potomac Aquifer Recharge Monitoring Laboratory established pursuant to*
 641 *§ 62.1-274.*

642 *"SWIFT Project" means the Sustainable Water Initiative for Tomorrow Project conducted by HRSD.*

643 § 62.1-272. **Potomac Aquifer Recharge Oversight Committee.**

644 *A. The Potomac Aquifer Recharge Oversight Committee is established as an advisory board and*
 645 *shall consist of eight voting members:*

646 *1. The State Health Commissioner or his designee, who shall be a full-time employee of the Virginia*
 647 *Department of Health;*

648 *2. The Director of the Department of Environmental Quality or his designee, who shall be a full-time*
 649 *employee of the Department;*

650 *3. The Executive Director of the Hampton Roads Planning District Commission or his designee, who*
 651 *shall be a full-time employee of the Hampton Roads Planning District Commission;*

652 *4. The Co-Directors of the Potomac Aquifer Recharge Monitoring Laboratory established pursuant to*
 653 *§ 62.1-274;*

654 *5. The Director of the Occoquan Watershed Monitoring Laboratory, established pursuant to*
 655 *regulations adopted by the Board;*

656 *6. A Virginia citizen who is a full-time employee of a water authority or locality that depends on the*
 657 *Potomac Aquifer as a significant source of public drinking water; and*

658 *7. A Virginia citizen who is a licensed physician engaged in medical practice within the Eastern*
 659 *Virginia Groundwater Management Area.*

660 *The two citizen members shall be selected for merit without regard to political affiliation and shall,*
 661 *by character and reputation, reasonably be expected to inspire the highest degree of cooperation and*
 662 *confidence in the work of the Committee. Each citizen member shall be appointed by the Governor,*
 663 *subject to confirmation by the General Assembly, and shall be appointed for an initial term of two years*
 664 *ending July 1, 2020, and for a term of four years thereafter. Any vacancy of the seat of a citizen*
 665 *member other than by expiration of a term shall be filled by the Governor by appointment for the*
 666 *unexpired term.*

667 *B. The Committee shall have two nonvoting, ex officio members:*

668 *1. The Regional Administrator of Region III of the U.S. Environmental Protection Agency (EPA) or*
 669 *his designee, who shall be a full-time employee of EPA Region III; and*

670 *2. The Director of the Virginia and West Virginia Water Science Center of the U.S. Geological*
 671 *Survey (USGS) or his designee, who shall be a full-time employee of USGS.*

672 *C. The Director of the Department shall be the initial chairman of the Committee and shall serve an*
 673 *initial term as chairman until July 1, 2019. The Committee shall elect a chairman to serve thereafter*

674 from among any of the eight voting members. The chairman shall be elected to serve a one-year term
 675 ending the next July 1 or until his successor is elected. There shall be no limitation on the number of
 676 consecutive terms that a committee member may be elected to serve as chairman.

677 D. The Committee shall convene at least quarterly during the initial three years ending July 1, 2021,
 678 and shall convene at least once per calendar year thereafter.

679 **§ 62.1-273. Committee duties and functions.**

680 A. The Committee shall be responsible for ensuring that the SWIFT Project, including in particular
 681 its effect on the Potomac Aquifer, is monitored independently.

682 B. The Committee shall periodically and not less than every five years obtain an evaluation of the
 683 work of the Potomac Aquifer Recharge Monitoring Laboratory by an independent panel of national
 684 experts convened under the auspices of the National Water Research Institute or a similar organization.
 685 The evaluation shall address (i) monitoring parameter selection procedures; (ii) analytical methods and
 686 screening techniques; (iii) monitoring locations, frequency, results, and interpretation; (iv) modeling
 687 activities; and (v) research activities.

688 C. Additional related activities of the Committee may include:

689 1. Ensuring that a monitoring program is developed and implemented for monitoring water quality,
 690 geological, aquifer pressure, land subsidence, and other SWIFT Project-related impacts;

691 2. Ensuring independent review of data concerning the quality of the final water produced by the
 692 SWIFT Project and upstream process control testing conducted by HRSD in the course of operating the
 693 SWIFT Project;

694 3. Ensuring that a continuous record of monitoring data is maintained and available;

695 4. Ensuring that projections are made of the effects of the SWIFT Project;

696 5. Ensuring that the Laboratory operations are separate, distinct, and independent from operations
 697 by HRSD;

698 6. Ensuring that research or modeling on aquifer science, managed aquifer recharge, water reuse
 699 treatment, wastewater treatment, and advanced treatment technology is conducted and coordinated with
 700 the appropriate stakeholders;

701 7. Ensuring that data on the status and performance of the SWIFT Project and on any changes in
 702 the condition of the aquifer due to the SWIFT Project are synthesized, reported, and submitted at least
 703 once a year to the relevant regulatory agencies and made available to localities, water authorities, the
 704 general public, and other stakeholders within the Eastern Virginia Groundwater Management Area;

705 8. Serving as a liaison with stakeholders in the Eastern Virginia Groundwater Management Area;

706 9. Ensuring that informational material related to the SWIFT Project is readily available to the
 707 public;

708 10. Ensuring that the Laboratory is established to fulfill the above responsibilities; and

709 11. In the event that the Committee finds there to be an imminent and substantial danger to the
 710 environment, to public health, or to a public water supply, referring such matter to the Department or
 711 the Virginia Department of Health for the potential issuance of an emergency order to cease injection
 712 or make changes pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and § 32.1-175, respectively.

713 D. The Committee may establish an advisory council to provide scientific and technical expertise in
 714 fields including aquifer science, managed aquifer recharge, wastewater treatment, advanced water
 715 treatment technology, water reuse, geology, geochemistry, hydrogeology, and related fields. The
 716 Committee may direct the advisory council to synthesize technical information for the Committee,
 717 provide recommendations related to monitoring SWIFT Project impacts, and provide other advice and
 718 support.

719 **§ 62.1-274. Potomac Aquifer Recharge Monitoring Laboratory.**

720 A. The Potomac Aquifer Recharge Monitoring Laboratory is established and shall be located at Old
 721 Dominion University (ODU) and shall be a unit thereof.

722 B. 1. The Director of the Laboratory (the Director) shall be a member of the faculty of ODU who
 723 has appropriate technical and scientific knowledge and shall be appointed by the President of ODU
 724 with the concurrence of the Director of the Department and the State Health Commissioner.

725 2. The Director shall be the principal administrative officer of the Laboratory and shall also serve as
 726 one of the Co-Directors for Technical Services.

727 3. The Director shall be under the general supervision of the President of ODU and shall carry out
 728 specific duties imposed upon him by the President. The Director also shall carry out the duties listed in
 729 this section and in so doing shall act at the direction of the Potomac Aquifer Recharge Oversight
 730 Committee established by § 62.1-272.

731 C. 1. The second Co-Director for Technical Services (the Co-Director) shall be a member of the
 732 faculty of Virginia Polytechnic Institute and State University (VPI) who has appropriate technical and
 733 scientific knowledge and shall be appointed by the President of VPI, with the concurrence of the
 734 Director of the Department and the State Health Commissioner.

735 2. The Co-Director shall assist the Director in carrying out the duties of the Laboratory.

736 3. The Co-Director shall be under the general supervision of the President of VPI and, with respect
737 to the duties listed in this section, under the direction of the Committee.

738 D. Subject to the approval of the Committee, the Director or Co-Director may apply for, accept, and
739 expend grants, gifts, donations, and appropriated funds from public or private sources; employ
740 personnel; and enter into contracts to carry out the purposes of this section.

741 E. The Laboratory shall work cooperatively with relevant technical experts as appropriate and
742 necessary to carry out the purposes of this chapter, including experts at the Virginia Institute of Marine
743 Science, The College of William and Mary in Virginia, Christopher Newport University, the University
744 of Virginia, and other universities, agencies, and departments of the Commonwealth, and the U.S.
745 Geological Survey.

746 F. The Laboratory shall:

747 1. Monitor the impact of the SWIFT Project on the Potomac Aquifer by reviewing and synthesizing
748 relevant water quality data;

749 2. Identify needs and recommend options for filling gaps in the monitoring of the Potomac Aquifer,
750 such as by recommending changes to monitoring locations and protocols;

751 3. Conduct sampling and analysis of SWIFT Project water and groundwater on a local scale near
752 SWIFT Project injections to verify monitoring data reported by HRSD;

753 4. Generate, assimilate, interpret, manage, and consolidate data to help inform decision making
754 related to the impact of the SWIFT Project on the Potomac Aquifer. These actions may include the
755 creation of a clearinghouse for aquifer and SWIFT Project data and the synthesis and dissemination of
756 information to various audiences, including the public and the scientific community; and

757 5. Advance understanding of the Potomac Aquifer, aquifer science, managed aquifer recharge, water
758 reuse treatment technology, and advanced water treatment, through research, analysis, or modeling.

759 G. The Laboratory shall focus initially on meeting the demonstration-phase needs of the SWIFT
760 Project; however, development of the Laboratory shall be planned in a manner to support its timely and
761 cost-effective expansion to meet the increased needs associated with the phased full-scale implementation
762 of the SWIFT Project.

763 2. That the Potomac Aquifer Recharge Oversight Committee established by § 62.1-272 of the Code
764 of Virginia, as created by this act, shall request from the Hampton Roads Sanitation District
765 funding sufficient to conduct its activities, including the monitoring of the recharge of the Potomac
766 Aquifer, until July 1, 2021, and that no later than July 1, 2020, the Committee shall develop a
767 plan for funding such activities beginning July 1, 2021.

Date	HRTPO 10:30 AM	HRPDC 12:30 PM	HRMFFA 10:30 AM	HRTAC 12:30 PM
JANUARY 18	✓	✓		
FEBRUARY 15	✓	✓		
MARCH 15	✓	✓		
APRIL 19			✓	✓
MAY 17	✓	✓		
JUNE 21			✓*	✓*
JULY 19	✓	✓		
AUGUST 29	✓**	✓**		
SEPTEMBER 20			✓	✓
OCTOBER 18	✓*	✓*		
NOVEMBER 15	✓	✓		
DECEMBER 20			✓	✓

**Annual Meeting*

***Annual HRPDC/HRTPO Joint Legislative Meeting with Hampton Roads General Assembly Caucus (10:30 AM)*