

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 585

An Act to amend and reenact § 32.1-169 of the Code of Virginia, relating to Board of Health; regulations; maximum contaminant levels in water supplies and waterworks.

[H 919]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-169 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-169. Supervision by Board.

A. The Board shall have general supervision and control over all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological, and physical quality of waters furnished for human consumption may affect the public health and welfare and may require that all water supplies be pure water. In exercising such supervision and control, the Board shall recognize the relationship between an owner's financial, technical, managerial, and operational capabilities and his capacity to comply with state and federal drinking water standards.

B. The Board shall adopt regulations establishing maximum contaminant levels (MCLs) in all water supplies and waterworks in the Commonwealth for (i) perfluorooctanoic acid and perfluorooctane sulfonate, and for such other perfluoroalkyl and polyfluoroalkyl substances as the Board deems necessary; (ii) chromium-6; and (iii) 1,4-dioxane. Each MCL shall be protective of public health, including of vulnerable subpopulations, including pregnant and nursing mothers, infants, children, and the elderly, and shall not exceed any MCL or health advisory for the same contaminant adopted by the U.S. Environmental Protection Agency. In establishing such MCLs, the Board shall review *the recommendations of any work group convened by the Commissioner after July 1, 2022, to study the occurrence of such contaminants in public drinking water*, MCLs adopted by other states, studies and scientific evidence reviewed by such states, material in the Agency for Toxic Substances and Disease Registry of the U.S. Department of Health, and current peer-reviewed scientific studies produced independently or by government agencies.

2. That the Board of Health shall at all times comply with all regulations adopted by the U.S. Environmental Protection Agency and shall adopt regulations establishing maximum contaminant levels for water supplies and waterworks in the Commonwealth that are consistent with such federal regulations in accordance with deadlines established in such federal regulations to maintain the Commonwealth's primary enforcement authority with regard to implementation of the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.) in the Commonwealth.

3. That, except for the purpose of adopting regulations establishing maximum contaminant levels for water supplies and waterworks in the Commonwealth promulgated by the U.S. Environmental Protection Agency, the Board of Health may initiate and continue a regulatory action to develop, but shall not adopt, regulations establishing maximum contaminant levels in water supplies and waterworks in the Commonwealth required by subsection B of § 32.1-169 of the Code of Virginia, as amended by the act, (i) until a work group convened at the option of the Commissioner of Health (the Commissioner) has completed a study of the occurrence of the contaminant proposed to be regulated in public drinking water in the Commonwealth and reported its findings and recommendations to the Governor and the Chairmen of the House Committees on Agriculture, Chesapeake and Natural Resources and Health, Welfare and Institutions and the Senate Committees on Agriculture, Conservation and Natural Resources and Education and Health and (ii) unless such action complies with requirements of the U.S. Environmental Protection Agency applicable to the development of regulations establishing maximum contaminant levels pursuant to 42 U.S.C. § 300g-1(b)(3)-(7). Any work group convened by the Commissioner to complete a study of the occurrence of the contaminant proposed to be regulated in public drinking water in the Commonwealth shall include at least one manufacturer with chemistry experience and representatives of publicly and privately owned waterworks, consumers of public drinking water, environmental and public health organizations, and such other stakeholders as the Commissioner shall deem appropriate. Administrative and technical support for such work group shall be provided by the Office of Drinking Water of the Department of Health (the Department) and shall include laboratory analysis, performed by the Division of Consolidated Laboratory Services of the Department of General Services, to determine current levels of contamination in public drinking water and possible sources of such contamination within available funding, including any grants from the U.S. Environmental Protection Agency that the Commissioner chooses to use for such purpose. In conducting its study, the work group shall (a) utilize a hybrid approach that takes into account potential risk or likelihood of finding the contaminant in public drinking water, the

location of the waterworks or source of water in relation to potential sources of the contaminant, and other factors for the sample study design rather than random sampling; (b) provide for analysis of public drinking water distributed by waterworks serving fewer than 3,300 customers, waterworks operating in rural areas of the Commonwealth, waterworks in close proximity to active or decommissioned military installations, airports, fire-training facilities, unlined landfills, or industrial facilities that manufactured or used significant quantities of the contaminant, and waterworks previously studies by the Department that reported levels of the contaminant in public drinking water; (c) develop a temporal data set by collecting multiple samples from each location sampled to gather data regarding variations in the prevalence of the contaminant in public drinking water; and (d) focus on entry point sampling and exclude consecutive waterworks from sampling. The work group shall report its findings and recommendation annually by December 1 to the Governor and the Chairmen of the House Committees on Agriculture, Chesapeake and Natural Resources and Health, Welfare and Institutions and the Senate Committees on Agriculture, Conservation and Natural Resources and Education and Health.