

Water-related Legislation in the 2002 Virginia General Assembly

Introduction

In 2002, the Virginia General Assembly convened on January 9 and adjourned on March 9, with a reconvened (“veto”) session on April 17. The legislature considered 2907 bills; 1587 were passed, 804 failed, and 517 were carried over to the 2003 session.

Starting below, we list 64 distinct measures related to water resources (with references to additional measures that were identical or very similar). We compiled the list using information available on the General Assembly’s Legislative Information Service (LIS) Web-site, at <http://leg1.state.va.us/021/lis.htm>. The bill summaries below are taken directly from LIS, with editing for space and occasionally for clarity or emphasis. Please note that the bill numbers in this file are NOT hyperlinked. To access more information about any bill, please visit the LIS Web site.

LIS categorizes bills and resolutions, and this year we searched for water-related legislation under the following nine categories: 1) Conservation; 2) Drainage, Soil Conservation, Sanitation, and Public Facilities Districts; 3) Fisheries and Habitat of Tidal Waters; 4) Game, Inland Fisheries and Boating; 5) Health; 6) Mines and Mining; 7) Waste Disposal; 8) Waters of the State, Ports, and Harbors; and 9) Water and Sewer Systems.

In the following we list first the water-related measures that *passed*, grouped according to the categories listed in the previous paragraph; next, the measures that *failed*, group in the same manner; and finally the measures that were *carried over* to 2003, again grouped the same way. The consecutive numbers to the left of each measure are for cross-referencing within this article and have no *legislative* significance. The actual bill or resolution numbers use the following abbreviations:

HB = bill started in House of Delegates;

HJ = joint resolution started in the House;

SB = bill started in the Senate; and

SJ = joint resolution started in the Senate.

PASSED

Conservation

- 1. HB 49 Soil and water conservation district boards:** Provides for *four*-year, rather than three-year, terms of office for elected and appointed directors. Identical to **SB 114**, which also passed.
- 2. HB 148 Closure of Solid waste landfills:** Allows municipal solid waste landfills utilizing double synthetic liner systems that had been permitted between December 21, 1988, and October 9, 1993, by the Department of Environmental Quality, to continue to accept solid waste after 2020. The bill would allow the Wise County landfill, specifically, to accept waste after 2020.
- 3. HB 178 Flood assistance fund:** Expands the uses of the Flood Prevention and Protection Assistance Fund to include grants *or* loans to public bodies owning dams and loans to private dam owners.
- 4. HB 211 Soil and water conservation district boundaries:** Requires the Virginia Soil and Water Conservation Board to consider funding as one of the factors in establishing boundaries of a new soil and water conservation district.
- 5. HB 646 Exemption, sand dune standards:** Exempts the Sandbridge Beach Subdivision from existing requirements relating to construction on coastal primary sand dunes. These provisions shall expire on January 1, 2006. Similar to **SB 319**, which also passed.

- 6. HB 870 Clinch-Guest Scenic River:** Extends the scenic river designation to approximately 9.2 miles of the Clinch River. The change in the name of the designated river from the Guest to the Clinch-Guest Scenic River reflects the inclusion of a segment of the Clinch River in the scenic designation.
- 7. HB 1257 Waste and water permit fees:** Directs the Virginia Waste Management Board to develop new permit fee schedules sufficient to cover no more than 20 percent of the direct costs of the hazardous and solid waste programs, using as the base the amounts allocated to these programs in the 2002 Appropriation Act; however, no individual permit could increase more than 300 percent. The bill also triples the statutory caps on water permit fees.
- 8. HJ 118 Study; future of Virginia's environment:** Continues the Commission Studying the Future of Virginia's Environment. Identical to **SJ 117**, which also passed.

Drainage, Soil Conservation, Sanitation and Public Facilities Districts

- 9. SB 61 Soil Scientist and Wetland Professional Boards:** Adds certified professional wetland delineators to the current Board for Soil Scientists. The bill also (i) establishes certification standards for "wetland delineators"; (ii) prohibits a certified professional wetland delineator from performing professional engineering, landscape architecture, and land surveying; and (iii) provides that any person practicing or offering to practice wetland delineation and who represents himself as a certified professional wetland delineator *without* holding such a certificate shall be guilty of a Class 1 misdemeanor. The bill has a delayed effective date of July 1, 2004.

Fisheries and Habitat of Tidal Waters

- 10. HB 613 Saltwater recreational fishing license:** Removes the seaside exemption from the requirement to have a saltwater fishing license when fishing in tidal waters. The bill exempts a person fishing from property he owns or rents; it also exempts property owners' nonpaying guest(s) and immediate family.
- 11. HB 921 Oyster grounds:** Removes Public Ground Number 8, located in the Elizabeth River, from the Baylor Survey public oyster grounds and allows the bottomland to be used for private purposes. Similar to **SB 468**, which also passed.
- 12. HB 978 Fishing Class II Guide License:** Creates a fishing Class II guide license for owners of recreational headboats or charterboats. An applicant must complete an apprenticeship program under a captain holding a Virginia guide license.
- 13. HB 1293 Oyster grounds:** Removes 0.39 acres of Public Ground Number 6 and 0.40 acres of Public Ground Number 7, located in the Lafayette River, from the Baylor Survey public oyster grounds and allows the bottomland to be used for private purposes.
- 14. HJ 164 Commercial oyster production:** Proclaims support for the commercial production of genetically sterile *Crassostrea ariakensis* oysters within guidelines and parameters established by the Virginia Institute of Marine Sciences and the Virginia Marine Resources Commission.
- 15. SB 115 Ballast water reporting system:** Designates the Hampton Roads Maritime Association as the Virginia Marine Resources' agent for collecting the Ballast Water Control Report forms filled out by ship operators. Exempts an operator from having to file a report if the vessel's previous port of call is within the United States Exclusive Economic Zone and a report had been previously filed there.
- 16. SB 326 Marine Police; safety zones & restricted areas:** Changes the name of Virginia Marine Patrol to Virginia Marine Police. Adds the protection of federal and state water-related installations from terrorist attack to the Virginia Marine Police's powers and duties.

Game, Inland Fisheries and Boating

- 17. HB 301 Regulation of Sight-seeing Carriers:** Repeals regulation of sight-seeing carriers by boat, special or charter party carriers by boat, and motor carriers by launch by the Department of Motor Vehicles except for insurance requirements. Passed with amendments by the Senate and by the Governor.
- 18. SB 74 Special lifetime trout fishing license:** Provides for special lifetime trout-fishing licenses applicable to specially stocked trout waters as designated by the Board of Game and Inland Fisheries.

Water and Sewer Systems

- 19. HB 225 Liens for local water and sewer charges:** Allows Goochland County to provide that charges for water or sewers or use thereof shall be a lien on the real estate served by such waterline or sewer.
- 20. HB 251 Septic system inspectors:** Changes the effective date for beginning minimum requirements for a person to use the title "accredited septic system inspector" from July 1, 2002, to July 1, 2003.
- 21. HB 1103 Regulation of sewage sludge:** Moves responsibility to regulate the land application of sewage sludge to the State Water Control Board and the Department of Environmental Quality (DEQ). This bill brings all land applications of sewage sludge under the regulatory authority of DEQ.
- 22. HB 1189 Mandatory water and sewer, Buckingham Co.:** Adds Buckingham County to those counties with authority to require connection to their water and sewage systems by owners of property that may be served by such systems.
- 23. HJ 202 Study; state water policies:** Requests the State Water Commission to conduct a two-year study of the effectiveness of the Commonwealth's water policies. The Commission must report its written findings and recommendations to the Governor and the 2004 Session of the General Assembly.
- 24. SB 269 Contracting for water and waste services:** Provides that localities and water and waste authorities may contract for, and contract to provide, meter reading, billing and collections, leak detection, meter replacement, and any related customer-service functions.
- 25. SB 682 Companies providing sewage services:** Provides that any governmental entity established pursuant to the laws of another state or other entity and that owns, manages, or controls any plant or equipment located within the Commonwealth that is used to provide sewage treatment services to a Virginia public service authority, shall be subject to regulation as a public utility.

Waters of the State, Ports and Harbors

- 26. HB 91 Dredging project mitigation:** Allows the State Water Control Board to require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects (such as in wetland areas). Identical to **SB 327**, which also passed.
- 27. HB 276 Rappahannock River Basin; definition:** Updates the definition of the Rappahannock River Basin to reflect new legislative districts (the commission includes General Assembly members whose legislative districts include a portion of the Basin). Identical to **SB 116**, which also passed.
- 28. HB 497 Water quality analysis, citizen involvement:** Requires the Department of Environmental Quality to establish a citizen water-quality monitoring program to provide technical assistance and authorizes the agency to provide grants to support water-quality monitoring organizations. Forbids the results of such citizen monitoring to be used as evidence in any enforcement action.
- 29. HB 910 Advanced Shipbuilding and Carrier Integration Center:** Names the carrier integration center the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center. The bill also would have changed the date by which an operations grant for the Center is to be awarded from no later than June 30, 2004, to no later than June 30, 2006, but an amendment by the Governor kept the original date (June 30, 2004) in place.
- 30. HB 1002 Nontidal wetlands program:** Eliminates any duplication of state and federal permitting requirements for those activities covered by a federal nationwide or regional permit. Once the State Programmatic General Permit is approved by the U. S. Army Corps of Engineers, only a state permit will be required for activities in nontidal wetlands.
- 31. HB1279ER Roanoke River Basin Advisory Committee and Bi-state Commission:** Establishes the Virginia Roanoke River Basin Advisory Committee and the Roanoke River Basin Bi-State Commission. The Roanoke River Basin Bi-State Commission will have nine members representing Virginia and nine members representing North Carolina. The bill contains specific guidelines regarding the qualifications required of committee members. The final bill was a conference committee version reconciling **HB 1279** and **SB 460**. **SB 460** had previously incorporated **HB 1278** and **SB 553**.
- 32. SJ 91 Study; Shipbuilding industry:** Continues the Joint Subcommittee Studying Economic Incentives to Promote the Growth and Competitiveness of Virginia's Shipbuilding Industry. The joint subcommittee shall continue to examine (i) development of a water-treatment process that consistently meets Virginia's 50 parts per trillion TBT discharge standard; (ii) additional methods for providing better training to, and reducing turnover among, shipyard workers; and (iii) promotion of Norfolk's piers as an

original point of departure for cruise ships as a means of developing new business for Virginia's shipyard companies. This resolution was identical to **HJ 69**, which failed.

FAILED

Conservation

- 33. HB 387 Air, water, and solid waste standards:** Would have required the Air Pollution Control Board, the State Water Control Board, and the Solid Waste Management Board to find scientific and technological evidence indicating that any proposed regulation establishing standards for air emissions, water quality, and solid waste could be met by a permit holder.
- 34. HB 389 Tributyltin compliance schedules:** Would have provided that the State Water Control Board establish schedules requiring compliance on and after January 1, 2008, with numerical effluent limitations for tributyltin (TBT) included in any Virginia Pollution Discharge Elimination System Permit issued by the Board. Similar to **SB 147**, which also failed.
- 35. HB 1220 Environmental Stewardship Bonds:** Would have authorized the issuance of Commonwealth of Virginia Environmental Stewardship Bonds in an amount not exceeding \$488,495,075, subject to approval by a majority of the qualified voters of the Commonwealth voting thereon at the November 5, 2002, general election. The purpose of the bonds would have been to provide funds for capital projects for (i) biological nutrient removal at sewage treatment facilities; (ii) rehabilitation to dams owned by soil and water conservation districts; (iii) combined sewer overflow projects; (iv) renovation of state parks and acquisition of real estate for parks; and (iv) acquisition of permanent interests in real estate for conservation purposes. Similar to **SB 563**, which also failed.
- 36. HJ 260 Occoquan Watershed Commendation:** Would have commended the Fairfax County Board of Supervisors for creating the Occoquan Watershed and expressed support for its opposition to attempts to permit or require paved trails in the watershed.
- 37. SB 621 Waste and water permit fees:** Would have directed the Virginia Waste Management Board and the State Water Control Board to develop new permit fee schedules that reflect the costs of implementing their waste-management and water permit programs that are not covered by general fund appropriations and federal grants.

Fisheries and Habitat of Tidal Waters

- 38. HB 363 Wetlands mitigation banking:** Would have considered portions of U. S. Geological Survey cataloging units 02080108, 02080208, and 03010205 that are south of the James River to lie within the same river basin (watershed) for purposes of wetlands-mitigation banking.

Game, Inland Fisheries and Boating

- 39. HJ 83 Study; Waterfowl-blind licensing statutes:** Would have required that a joint subcommittee be established to study the Commonwealth's waterfowl-blind licensing statutes.
- 40. SB 47 Personal flotation devices for children:** Would have made it unlawful for a person operating a motorboat, other than a vessel required to have a certificate of inspection issued by the U. S. Coast Guard, to permit a person twelve years of age or younger to be in the motorboat while it was underway if such minor was not wearing a personal flotation device and was not below deck or in an enclosed cabin.

Mines and Mining

- 41. HB 860 Local severance tax revenues for water systems:** Would have authorized counties and cities to impose an additional local severance tax on persons engaged in the business of severing gases from the earth, at a rate not to exceed one percent of gross receipts. The revenues from this increase would have been used for constructing new and improved water systems and lines in areas with natural water supplies that are insufficient in quality or quantity.

Public Service Companies

42. HB 240 Railroads; utility crossings: Would have limited, to \$500 per crossing, the amount a railroad company can charge a county, city, town, or other political subdivision for allowing its water or sewer utility facilities to cross the railroad's facilities. Similar to **HB 859** (# 59, below), which was carried over to 2003.

Water and Sewer Systems

- 43. HB 191 Sewage disposal; Commissioner's immunity:** Would have prohibited any action from being taken against the Commissioner of Health or his designee for trespass, if they were carrying out their responsibilities under on-site sewage-disposal laws.
- 44. HB 1044 Unauthorized waste or oil:** Would have required a person who, without authorization, discharges sewage, waste, or any noxious or deleterious substance into state waters, or with a reasonable expectation of the material entering state waters, to notify the emergency services director or coordinator of the affected locality within 24 hours of the discharge.
- 45. HB 1130 Mandatory connection to water and sewer:** Would have allowed an owner of undeveloped land in certain counties to use a private system for providing a supply of water and for the disposal of sewage.
- 46. HB 1204 Drainfield guidelines:** Would have authorized the Board of Health to issue guidelines in determining equivalency of drainfield sizes for types of on-site septic systems.
- 47. SB 142 Water permit fees:** Would have removed the caps on the amounts the State Water Control Board can charge for the processing of applications for the various types of water permits.
- 48. SB 630 Mandatory connection to water and sewer:** Would have provided that an owner of undeveloped land, located in a county with the authority to require connection to the county's water and sewer systems, may elect to use private systems for providing a supply of water and for the disposal of sewage so long as such systems met the requirements of the Virginia Department of Health. Such owner would not have been required to pay a connection fee, a frontage fee, or a monthly nonuser service charge.

Waters of the State, Ports and Harbors

- 49. HB 982 Condemnation of wetlands:** Would have required the Commonwealth, before it could acquire compensatory wetlands by condemnation, to exhaust all reasonable mitigation options within the same cataloguing unit (as defined by the U. S. Geological Survey's Hydrologic Unit Map of the United States) in which a wetlands loss occurs; or, if those efforts proved ineffectual, then within the immediately adjacent cataloguing unit or units located in the same river watershed as the impacted wetlands.
- 50. SB 531 Sales and use taxes; refunds in shipbuilding:** Would have provided refunds of sales and use taxes to an industrial development authority that has reimbursed its contractors for such taxes imposed on tangible personal property for use in the Advanced Shipbuilding and Carrier Integration Center.

CARRIED OVER TO 2003 SESSION

Conservation

- 51. HB 234 Beach Maintenance and Development:** Would expand the purposes of a current fund that awards matching grants to local governments to pay the costs of erosion-abatement measures. Would also provide grants for the construction or maintenance of public beach-related support structures or facilities and the creation or restoration of beach landscapes.
- 52. SB 617 Erosion and sediment control certificates:** Would grant plan-approving authorities the option to waive the certificate of competence requirement for land-disturbing activity and substitute "agreements in lieu of a plan." Agreements in lieu of a plan are contracts between the plan-approving authority and the landowner that are used for ensuring proper implementation of conservation measures during construction of a single-family residence.

53. SB 592 Waste and water permit fees: This bill was identical to HB 1257 (# 7, above), which passed, until it (SB 592) was amended by Governor Warner and returned for consideration in the reconvened session. His amendment would have increased dumping permit fees at landfills to generate funds for several land-conservation and water-quality efforts. The measure was unsuccessful but will be considered again in the next session.

Fisheries and Habitat of Tidal Waters

54. HB 975 Crab pot tagging program: Would require the Virginia Marine Resource Commission to implement by regulation a crab-pot tagging program to facilitate the enforcement and identification of crab-pot licenses. The act would be effective only if reenacted by the 2003 Session of the General Assembly and if adequate funds are appropriated.

55. SB 297 Protection of certain female crabs: Would make it unlawful to catch, hold, possess, offer for sale, or sell an egg-bearing female crab or a female crab from which the egg pouch, sponge, or bunion had been removed.

56. SB 333 Marine Patrols Fund; tax revenues: Would provide for an amount generated by a two-percent sales and use tax, collected from the sale of fishing and auxiliary fishing equipment purchased for saltwater use, to be deposited into the Marine Patrols Fund.

Game, Inland Fisheries and Boating

57. HB 201 Waterfowl sanctuaries and blinds: Would repeal a number of local Acts of Assembly, due to duplication, that provide for the establishment of waterfowl sanctuaries in various localities.

58. HB 202 Hunting of waterfowl from duck blinds: Would clarify the definitions of stationary and floating blinds and the procedures for their placement; eliminate the practice of setting up "dummy blinds" in order to reserve certain locations from use by other waterfowl hunters; and require licensing agents to record the location of the blind site on a map and make such a record available to the public.

Public Service Companies

59. HB 859 Railroads; utility crossings: Would limit to \$1,000 per crossing the amount a railroad company can charge a county, city, town, or other political subdivision for allowing water or sewer utility facilities to cross the railroad's facilities. Similar to **HB 240** (# 42, above), which failed.

Water and Sewer Systems

60. HB 226 Construction permits; local option: Would allow localities to establish reasonable testing requirements to determine compliance with existing federal or state drinking-water standards and require that such testing be done prior to the issuance of building permits.

61. HB 480 Mandatory water connection legal payments: Would provide that, when legal action is required to compel a property owner in Virginia Beach to comply with any mandatory water and sewer connection ordinance, the locality shall be entitled to recover its reasonable attorneys' fees from hiring outside counsel in such action.

62. SB 618 Sewage sludge; local authority, fees: Would provide authority for localities to enact ordinances to prohibit, restrict, or regulate the land application of sewage sludge, and allow for the collection of local fees to cover testing and monitoring costs.

Waters of the State, Ports and Harbors

63. HB 388 Maritime Investment Act: Would establish a grant program to be paid, subject to appropriation, from the Virginia Maritime Investment Partnership Grant Fund. The program would provide grants to eligible ship-repair companies making a capital investment of at least \$50,000 (eligible ship-repair companies would be companies that have continuously been repairing ships in Virginia for at least five years.) Similar to **SB 13**, which was also carried over.

64. SB 331 Permit; maintenance dredging: Would exempt, from additional wetlands compensation as part of Virginia Water Protection Permits, maintenance dredging undertaken to mitigate the adverse impact of sedimentation and to restore the natural contours of Virginia's waterways.

—*By David Mudd*