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SENATE BILL NO. 592

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patrons Prior to Substitute—Senators Hanger [SB592] and Ticer [SB621])

Senate Amendments in [] — February 7, 2002

A BILL to amend and reenact §§ 10.1-1402.1 and 62.1-44.15:6 of the Code of Virginia, relating to environmental permit fees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402.1 and 62.1-44.15:6 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1402.1. Permit fee regulations.

Regulations promulgated by the Board ~~which~~*that* establish a permit fee assessment and collection system pursuant to ~~subdivision~~ *subdivisions 15 and 16* of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions.

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to ~~subdivision~~ *subdivisions 15 and 16* of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with the processing of an application to issue, reissue, amend or modify permits which the Board has authority to issue for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

6. *The Board shall promulgate regulations establishing a fee schedule sufficient to cover no more than twenty percent of the direct cost of the hazardous and solid waste management programs based on allocations made to these programs in the 2002 Appropriation Act [; however, no individual permit fee shall increase more than 300 percent of the fee in existence on July 1, 2002] .*

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency ~~which~~*that* imposes permit fees.

B. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major	\$ 8,000 24,000
Minor	\$ 3,500 10,500

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SB592ES1

59	General	\$ 400	1,200
60	2. Virginia Pollution Abatement		
61	Industrial/Wastewater	\$ 5,000	15,000
62	Industrial/Sludge	\$ 2,500	7,500
63	Municipal/Wastewater	\$ 5,000	15,000
64	Municipal/Sludge	\$ 2,500	7,500
65	Other	\$ 250	750
66	3. 401 Certification/Virginia Water Protection		
67	Individual	\$ 3,000	9,000
68	General	\$ 400	1,200
69	Waiver	\$ 400	
70	4. Ground Water Withdrawal	\$ 2,000	6,000
71	5. Surface Water Withdrawal	\$ 4,000	12,000

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73 When modifications in these permits or certificates have been initiated by the Board, the fee for the
74 modified permit or certificate shall not exceed seventy-five percent of the maximum amount established
75 by this subsection. Payments for the costs of processing applications by the Department of Game and
76 Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of
77 twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall
78 further be limited to those permits or certificates these agencies are required to review by the Code of
79 Virginia.

80 C. When promulgating regulations establishing permit fees, the Board shall take into account the
81 permit fees charged in neighboring states and the importance of not placing existing or prospective
82 industries in the Commonwealth at a competitive disadvantage.

83 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
84 shall make a report on the implementation of the water permit program to the Senate Committee on
85 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
86 Committee on Appropriations, the House Committee on Conservation and Natural Resources and the
87 House Committee on Finance. The report shall include the following: (i) the total costs, both direct and
88 indirect, including the costs of overhead, water quality planning, water quality assessment, operations
89 coordination, and surface water and ground water investigations, (ii) the total fees collected by permit
90 category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds
91 received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of
92 permit applications received by category, (vii) the number of permits issued by category, (viii) the
93 progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and
94 indirect costs to neighboring states of administering their water permit programs, including what
95 activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders
96 and applicants.

97 In addition, the 1998 report shall include an analysis and estimate of the annual costs to permit
98 holders and permit applicants if the direct and indirect costs of administering the water permit program
99 were to be apportioned in a manner that would require the permit holders and applicants to pay fifty,
100 seventy-five, and one hundred percent of the program's total cost through annual permit fees. The
101 Department shall propose how the following factors could be used to adjust individual permit fees: (i)
102 the average time and complexity of processing a permit in each of the various categories of permits and
103 permit actions, (ii) the permit holder's compliance history, (iii) whether the permit holder has
104 implemented pollution prevention plans, (iv) whether the applicant or permit holder has used innovative
105 technology and (v) the financial hardship of the applicant or permit holder.

106 E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund
107 appropriation to the Board.

108 F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional
109 permits ~~which~~that may be required by the federal government and administered by the Board, or any
110 new permit required pursuant to any law of the Commonwealth.

111 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees
112 for facilities ~~which~~that have established a record of compliance with the terms and requirements of their
113 permits.

114 2. That the Virginia Waste Management Board and the State Water Control Board shall
115 promulgate regulations to implement the provisions of this act to be effective within 280 days of its
116 enactment.

117 3. That the provisions of this act shall expire on July 1, [2007 2004] .