

2003 RECONVENED SESSION

SENATE SUBSTITUTE REPRINT

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SENATE BILL NO. 592

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 8, 2002)

(Patron Prior to Substitute—Senator Hanger [SB592]; Senator Ticer [SB621])

A BILL to amend and reenact §§ 10.1-1402.1 and 62.1-44.15:6 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 2.2 consisting of sections numbered 10.1-1413.3 and 10.1-1413.4, 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, and that the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 2.2 consisting of sections numbered 10.1-1413.3 and 10.1-1413.4 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.*

Article 2.2.

Environmental Fees From Permitted Solid Waste Management Facilities.

§ 10.1-1413.3. *Per ton environmental fees from permitted solid waste management facilities.*

A. The owner or operator of every landfill permitted to dispose of solid waste and subject to the reporting requirements of § 10.1-1413.1 shall remit to the State Treasurer, for deposit into the Commonwealth Conservation Fund, five dollars for each ton of solid waste disposed of at the landfill during the previous three months. For facilities without a scale, two cubic yards of solid waste shall be the equivalent of one ton. Payment shall be made within thirty days of the end of each fiscal quarter, with the first payment due April 30, 2003. The owner or operator may, on a quarterly basis, withhold \$10,000 or three percent of the amount due, whichever is less, for the purpose of covering the administrative costs associated with the remittance of the fee to the Commonwealth. The Department of Environmental Quality shall notify the owner or operator of every landfill permitted to dispose of solid waste of the requirement of this section not later than January 1, 2003.

§ 10.1-1413.4. *Commonwealth Conservation Fund established; purpose; use of moneys in Fund.*

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Commonwealth Conservation Fund, hereafter referred to as "the Fund." All moneys collected pursuant to § 10.1-1413.3 shall be paid into the state treasury and credited to the Fund. The Fund shall also consist of funds appropriated to it by the General Assembly and such other sums as may be made available to it from any other source, public or private, all of which shall be credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys

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60 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the
 61 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes
 62 described in subsection B. This fund shall be exempt from statewide indirect costs assessed by the
 63 Department of Accounts.

64 Expenditures and disbursements from the Fund for the purposes of subdivision B 1 shall be made by
 65 the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary
 66 of Natural Resources. Disbursements from the Fund as directed in subdivisions B 2 through B 5 shall
 67 be made in the quarter in which the funds are received.

68 B. The moneys in the Fund shall be disbursed for the following purposes:

69 1. Forty percent to the Virginia Land Conservation Fund established pursuant to §10.1-1020. At
 70 least two-thirds of the funds distributed by the Virginia Land Conservation Foundation pursuant to this
 71 subdivision shall be used to secure easements to be held or co-held by a public body. In addition, the
 72 Board of the Virginia Land Conservation Foundation shall give preference to proposals involving
 73 easement acquisition and shall take into account the dollar-per-acre value of proposals when
 74 determining how to allocate all funds received pursuant to this subdivision.

75 2. Thirty-five percent for grants to localities to support local conservation efforts and natural
 76 resources restoration, and protection and enhancement initiatives, including but not limited to, solid
 77 waste management, recycling, wastewater treatment, drinking water supply, pollution prevention,
 78 sensitive lands acquisition, open space preservation, parks and recreation, water quality enhancement
 79 and protection, brownfields redevelopment, upgrade of existing waste sites and landfills, and the
 80 clean-up or closure of contaminated or abandoned waste sites and landfills. The Secretary of Natural
 81 Resources shall develop guidelines, in consultation with an advisory group of interested parties
 82 including representatives of local governments, for the distribution of grants. Such guidelines shall
 83 provide for an equitable distribution of grant funding among all localities. A copy of such guidelines
 84 shall be provided to the chairmen of the House Committees on Appropriation, and Agriculture,
 85 Chesapeake and Natural Resources and the Senate Committees on Finance, and Agriculture,
 86 Conservation and Natural Resources;

87 3. Nineteen percent to the Virginia Water Quality Improvement Fund established pursuant to
 88 § 10.1-2128;

89 4. Five percent to the Virginia Brownfields Restoration and Economic Redevelopment Assistance
 90 Fund established pursuant to § 10.1-1237; and

91 5. One percent for the Department of Environmental Quality to cover the costs associated with
 92 implementing § 10.1-1413.4 and to assist in implementing the Department's environmental protection
 93 programs.

94 § 62.1-44.15:6. Permit fee regulations.

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

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

111	Type of Permit/Certificate Category	Maximum Amount
112	1. Virginia Pollutant Discharge	
113	Elimination System	
114	Major	\$ 8,000 24,000
115	Minor	\$ 3,500 10,500
116	General	\$ 400 1,200
117	2. Virginia Pollution Abatement	
118	Industrial/Wastewater	\$ 5,000 15,000
119	Industrial/Sludge	\$ 2,500 7,500
120	Municipal/Wastewater	\$ 5,000 15,000

121	Municipal/Sludge	\$ 2,500	7,500
122	Other	\$ 250	750
123	3. 401 Certification/Virginia		
124	Water Protection		
125	Individual	\$ 3,000	9,000
126	General	\$ 400	1,200
127	<hr/> Waiver <hr/>	\$ 400	
128	4. Ground Water Withdrawal	\$ 2,000	6,000
129	5. Surface Water Withdrawal	\$ 4,000	12,000

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

C. 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.

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

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

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

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

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

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

3. That the provisions of subdivision 6 of § 10.1-1402.1 of this act shall expire on January 1, 2003.

4. That the provisions of Article 2.2 of Chapter 14 of Title 10.1 consisting of §§ 10.1-1413.3 and 10.1-1413.4 of this act shall become effective on January 1, 2003.

5. That the provisions of this act amending § 62.1-44.15:6 shall expire on July 1, 2004.